

**MINUTES**  
**OF THE**  
**ENVIRONMENTAL PROTECTION COMMISSION**  
**MEETING**  
**JUNE 10, 2008**

**INGRAM OFFICE BUILDING**  
**7900 HICKMAN ROAD**  
**URBANDALE, IOWA**

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## MEETING MINUTES

### CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Henry Marquard at 10:09 a.m. on June 10, 2008 in the Ingram Office Building, Urbandale, Iowa.

### COMMISSIONERS PRESENT -

Suzanne Morrow, Secretary  
Henry Marquard, Chair  
David Petty  
Susan Heathcote  
Martin Stimson  
Paul Johnson  
Charlotte Hubbell, Vice-Chair

### COMMISSIONERS ABSENT

Ralph Klemme

### OATH OF OFFICE

Martin Stimson took the oath of office.

### ADOPTION OF AGENDA

Move up Items 17 & 18 to present right after the contracts – Chapter 64 rules

Move up Items 19 & 19a to present before the contracts – Rulemaking issues

*Motion was made by Sue Morrow to approve the agenda as presented. Seconded by Charlotte Hubbell. Roll call vote went as follows: David Petty – nay; Susan Heathcote – aye; Sue Morrow – aye; Martin Stimson – aye; Paul Johnson – aye; Charlotte Hubbell – aye; Henry Marquard – aye. Motion carried.*

**APPROVED AS AMENDED**

Chairperson Marquard said that from now on we will limit staff presentations on contracts to 5 minutes.

*Motion was made by Charlotte Hubbell to approve the contract presentations to 5 minutes. Seconded by Susan Heathcote. Motion carried unanimously.*

## **APPROVAL OF MINUTES**

*Motion was made by Charlotte Hubbell to approve the minutes from the April 8<sup>th</sup> and April 16<sup>th</sup> meetings as presented. Seconded by Sue Morrow. Motion carried unanimously.*

**APPROVED AS PRESENTED**

*Motion was made by Charlotte Hubbell to table the May minutes until next month. Seconded by Susan Heathcote. Motion carried unanimously.*

**TABLED – MAY MINUTES**

## **DIRECTORS REMARKS**

Liz Christiansen said that a lot DNR folks have been staffing the emergency response center due to flooding issues.

David Petty asked about the current updates of sewer overflows.

Barb Lynch said that there about 150 communities bypassing at this point and with the rivers coming up I would expect that to increase. Our main focus is on drinking water and taking samples.

Sue Morrow said that we have big rains every year and we need to find out how we can stop this.

Charlotte Hubbell said that it concerns me that the rivers are overflowing into lagoons. Were the lagoons sited in the wrong places? Could I ask the DNR to get us information on the instances where the rivers have overflowed into lagoons? And the distance from the river? And what the rise of the levels has been?

Henry Marquard said that the Commission would like to discuss this at the July meeting once the Commissioners have received the information.

Henry Marquard thanked the DNR staff for all of their hard work and dedication during this time of flooding and emergency issues.

**INFORMATIONAL ONLY**

**PUBLIC PARTICIPATION**

**RICKY MOCK**, City of Sioux City submitted the following comments:

**Issue:** Changes are being proposed to Chapter 135 that could have far reaching impacts on communities across Iowa. These proposed changes could have far reaching legal, financial and health implications.

**Discussion:** Chapter 135 of the Iowa Code addresses the methods used to model contaminant plumes from underground storage tanks (UST). It establishes a way to address the owners and operators of these tanks and provides a means to protect public water supplies (PWS).

The current language of Chapter 135, while far from perfect, provides a method to ensure that public drinking water wells are protected. Although the current model (v. 2.51) overestimates the plumes, it still does not take into account the vertical movement of contaminants or the effect that large public wells have on the migration of these pollutants. All modeling thus far has only represented horizontal movement in steady-state conditions, including the newer model (v.3.1).

Changes to the current language were on the October agenda. Those proposed changes strengthened the present language and recognized that drinking water wells play a major role on plume movement. Those proposed changes also addressed the newer fuel additives that are starting to play a major role in groundwater contamination and public health concerns.

The changes never made it to the October agenda; however language changes were made that were not in line with the support of the Water Systems in Iowa. Those changes were on the November Commission Agenda. Sioux City asked that the Commission table the item and open up the discussions to a broader base of stakeholders. That process did occur and Sioux City thanks the Commission and Department for your efforts.

The language presented to the Commission today is an improvement over that which was presented in November and takes into account the effect on public water systems which are now designated as “sensitive areas”. While we believe that further changes to the language should be considered, especially those involving fuel additives, Sioux City believes that the proposed modeling changes and ability to close sites that are not endangering PWS are beneficial and should therefore be pursued.

**Requested Action:** Sioux City requests the Environmental Protection Commission members to authorize the Department to utilize the new model, on non sensitive area, and to direct Department staff to continue discussions on the inclusion of fuel additive language to Chapter 135.

**JILL SOENEN**, representing the Iowa Association of Municipal Utilities said that they support the proposed amendment to Chapter 135. With these changes we feel that public water supply wells will be given a fair and in-depth assessment that will ensure the public health and water supply and their consumer’s investment in the well itself. The proposed amendments will benefit all stakeholders while providing regulatory flexibility. We believe the proposed rules

provide the necessary protection to public water supplies and their consumers. We support the proposed amendments as written.

**JOHN NORTH**, Iowa Association of Water Agencies submitted comments regarding the proposed rule changes – Chapter 135 – LUST tank site rules.

I was recruited to serve as a representative for the drinking water industry on the DNR Stakeholder Advisory Committee that is considering the proposed changes to Chapter 135. I have attempted to keep the various professional organizations that represent the drinking water industry updated regarding the stakeholder meetings and the proposed draft rule changes. These organizations include the Iowa Association of Municipal Utilities (IAMU, Iowa Rural Water Association (IRWA), the Iowa Section of the American Water Works Association (IA Section – AWWA) and the Iowa Association of Water Agencies (IAWA).

My recommendation to these groups is that they should support the proposed changes to Chapter 135. However, I must stress this is simply my recommendation to these organizations. The respective Boards or Executive Committees for these organizations have not had an opportunity to review and formally adopt a position regarding the proposed changes. I should also note that my recommendation will be accompanied by some general caveats and a discussion of other related issues and concerns that were outside the purview of the DNR stakeholder advisory committee.

The general perspective that I brought to the stakeholder meetings can be summarized as follows:

- ❖ Contamination of aquifers and wells that supply drinking water is a real and significant concern. This is evidenced locally by the contamination problems experienced in Sioux City and Climbing Hills, and nationally by the BTEX contamination that affected the aquifer and many of the wells that supply drinking water to the residents of Long Island in New York City.
- ❖ Overly prescriptive regulations will not serve the best interests of the regulators, the regulated community of the citizens of Iowa. The protection of our natural resources can be best accomplished if the DNR is afforded discretionary regulatory authority to evaluate and determine the appropriate assessment and mitigation strategies for individual LUST sites.

In formulating my recommendation to the drinking water industry, I considered the following:

- ❖ Is the new plume modeling software based on sound science?
- ❖ Do the proposed changes constitute good public policy? That is, can the proposed changes be deemed to be reasonable and prudent?
- ❖ Will the proposed changes ensure the appropriate level of protection for Iowa's water resources to include drinking water supplies?
- ❖ Will the proposed changes ensure that the DNR has adequate latitude to exercise its discretionary authority? That is, will Chapter 135 Regulations as revised



enable the DNR to evaluate the specific conditions at each site and to tailor the assessment or mitigation requirements as it deems most appropriate for that site?

With some minor exceptions or qualifiers, my general responses to the questions or criteria above are positive. Although I am recommending that drinking water industry support the approval of the new Tier 2 modeling software, I think it is imperative that we recognize that it has some significant inherent shortcomings. They include:

- ❖ Although the modeling software is still somewhat conservative, there will be instances when the actual plume size or movement will be greater than that predicted by the model.
- ❖ The model only predicts the horizontal movement of a plume. It does not account for or predict the vertical movement of a plume.
- ❖ The model does not account for the effects that a pumping well might have on the size or movement of a plume.

The draft rules include the following stipulation:

“If, however, after taking account the certified groundwater professional’s risk analysis, professional recommendations and other relevant data, the DNR does not accept groundwater professional’s recommendations, the department must demonstrate there is a hydrogeological connection between the underground storage tank contaminated aquifer and the public water supply and that the underground storage tank release is likely to pose an unreasonable risk of impact to the public water supply well.”

I will defer to the Department’s judgment as to whether it needs to or should assume this responsibility in the event it disagrees with groundwater professional’s report and recommendations. However, I believe that any such investigation must be accomplished in an expeditious manner and at no cost to the Public Water Supply.

Despite these reservations, I will recommend that the drinking water industry support the approval of the proposed changes to Chapter 135.

As I mentioned previously, there are some related issues of concern to the drinking water industry that were outside the purview of the Stakeholder Advisory Committee. An example is the fact that DNR’s regulatory charge or standard is the protection of public health. For drinking water supplies, the public health is deemed to be “adequately protected” unless there is an actual exceedance of the Maximum Contaminant Level (MCL) as established by the Safe Drinking Water Act. However, this standard or criteria fails to recognize that a well or drinking water supply can be severely compromised (or even made unusable) even if a contaminant is present at levels significantly lower than its MCL value. For example, MCL value for toluene is 1.0 parts per **million**. However, consumers can frequently detect (smell or taste) toluene at trace levels as low as 1-2 parts per **billion**, which will effectively preclude the use of a water supply well that has toluene present at those trace levels.

**JOHN WHEELER**, certified engineer said that the Department has done a good job in taking everyone's input and then coming up with a rule that addresses protection of drinking water wells. My biggest concern is Item 5 of the rule – if after taking into account the groundwater professionals recommendations and other relevant data the Department does not accept the certified groundwater professionals recommendations the Department must demonstrate that there is a hydrogeological connection between the underground storage tank and the public water supply well. If the regulatory agency is determining the responsibility to demonstrate if there is conductivity, I think this is a big flaw in the rule. Most of the things in the amendment go very well with protecting the public supply well, I just don't think the Department has the resources to go to court and prove that there is conductivity if they disagree with the groundwater professional.

Henry Marquard asked who should have this responsibility.

John Wheeler said that it should be the responsibility of the underground storage tank owner.

**NEILA SEAMAN**, representing the Sierra Club asked the Commission to deny the sanitary landfill petition for rulemaking as filed by the ten landfills listed in the item 15. Though I have not seen the petition, we would oppose any rule amendments that would constitute a potential decrease in the protection of human health in the environment. We also oppose the rule package that was presented last month as notice of intended action. We believe all landfills should be covered under the recently passed rules but we'll comment more on that later.

In regards to the Notice of Intended action to amend the Commissions quorum and voting requirements, I fully appreciate this idea. Last month's vote on Greene County was very peculiar that even though the majority of the Commission voted to deny the permit, the motion failed.

Thank you in advance for your consideration.

**HUGH ESPEY**, member of ICCI addressed the issue of farmers applying manure to snow covered ground. This issue has been raised numerous times but no successful actions to ban it. It's clear that this practice contributes to water pollution. ICCI members submitted a rulemaking petition at the May 13<sup>th</sup> meeting to ban animal feeding operations from applying manure on frozen or snow covered ground. We know DNR staff is working on a similar rule but we feel that it will be weaker than our rule. We ask that you support our rule. We do not feel the status quo is how we should act with this issue. We need to do what's right. Please support our petition.

David Petty asked what the intent of the petition is. Does it apply to all animals or just those under a MMP?

Hugh Espey said that the intent of the written petition applies to animal feeding operations that require a MMP.

**LANNY VAN DAELE**, asked to defer his comments until the 1:00 presentation on the South Dallas County landfills issue.

**HAL MORTON**, deferring his comments on behalf of the petitioners until 1:00.

**VICKIE MOOREHEAD**, deferring her comments until 1:00.

**TOM HADDEN**, Executive Director at the Metro Waste Authority supports the DNR staffs decision to deny the petition for rulemaking. There have been rules promulgated by the EPA in 1994 – Subtitle D landfill rules. These rules were the next revolution to protect the groundwater systems. Iowa is the last state to implement these rules. Ultimately you have to move forward. Many landfills have made huge investments to meet these rules. If others are not taking these same steps that becomes problematic. Why should we take these financial steps if those who are not, seem to get away with it. We support the staff's decision on this.

**MYRON MAGWITZ**, from Page County landfill said that they support the Chapter 113 rulemaking. In 2003, we received an award for environmental protection at our facility. We are trying to do whatever we can to protect our groundwater. This rule has a large financial impact on us. We do support the petition.

**MIKE FOX**, representing Fremont County landfill stated his support for the petition. We have a unique situation in SW Iowa. Commissioners, don't forget that the petitioners listed on the petition are environmental advocates. They are not stressing not doing anything. The petition is protecting the taxpayers. These people on this petition have meet federal requirements and were accepted by the DNR prior to the rulemaking change. We're not fighting against the subtitle D or protecting the environment, we're fighting for taxpayers for having to pay a lot of taxes. There are many more costs involved besides gas costs. Please look at the petition as not a way of stopping a rule; it's a way of controlling excess spending.

**MIKE SEXTON**, former chair of the Senate Natural Resources and Environment Committee and one of the owners of Twin lakes Environmental Services. We represent the environmental interests of over 400 livestock producers in over 70 counties.

Mr. Sexton passed out a nutrient application restrictions map as adopted in Wisconsin. It shows areas where manure can be spread in the winter and areas where it can not be spread in the winter. Wisconsin has local control down to the township level.

I'm concerned, like Commissioner Petty, that this petition was dealing with all livestock operations but maybe that's not what we're talking about today. The smaller operations that have no spreading maps, set back requirements and are not required to keep track of any manure probably will stumble into an area where they shouldn't be spreading on. The field staff is outstanding and they are handcuffed right now to their offices because of budget constraints.

Susan Heathcote asked if Mr. Sexton had any recommendations to an approach?

Mr. Sexton said that Iowa's approach is getting on the right path by involving a coalition of stakeholders. There is a database of soils that will probably assist in helping us know where to or where not to spread manure in the winter.

I would be opposed to a general ban of manure on frozen ground.

Paul Johnson asked if Mr. Sexton approves the Wisconsin approach? And how can we correct the problem of not enough DNR field staff?

Mr. Sexton said yes with some tweaking. The Wisconsin plan prohibits manure application to any water ways, terraces or within 100 feet of erosions. I believe it's a doable plan. It lists the soils that can not be applied and therefore you don't apply it.

The biggest concern about the lack of field staff is that they keep getting more and more things to regulate in the field but receive no additional monies for staff. (example: not applying manure to soybeans) Another issue is that there are many people writing manure management plans that are not certified to do it. The DNR needs to help certify plan writers and then establish some sort of consequence if it's done wrong.

**TOM NORRIS**, Petroleum Marketers Management Insurance Company (PMMIC) submitted comments regarding Chapter 135 IAC – ARC 6596B.

PMMIC has worked with IDNR LUST staff and other stakeholders for over 2 years in an effort to recalibrate the exiting RBCA model as it relates to the groundwater pathway. We worked with, (and paid 50% of the fees,) for Dr. LaDon Jones's, the original author of the software chosen by IDNR, scientific study to recalibrate the model as suggested by ASTM ES38-94 standards. 455B.474 outlines that the use of ASTM ES38-94 standards for RBCA is required for evaluating LUST sites in the state.

The current model is 17.2 times over predictive for diesel and 8.6 times over predictive for benzene at the lowest contaminant levels. PMMIC along with stakeholders and IDNR staff agreed to a recommended recalibration to the model that would reflect a 2.6-3.0 times over predictive level for these chemicals of concern in the future. The proposed recalibrated version of the model is actually more over predictive at higher levels of contamination than the current model version. It should be noted that both the current and proposed model does not take into account the decay factor of the contaminant source and assumes a constant source which is contrary to the ASTM ES38-94 recommendations for a RBCA model. The current and proposed models are also designed to always default to actual contaminant levels so under prediction of contamination is virtually impossible. Both of these considerations provide additional protection to the environment with either the current or proposed model.

After consensus was reached by the stakeholders and DNR in the last meeting mid 2007 the stakeholders expected a proposed rule outlining the recalibration would be brought to the EPC. Instead the proposed rule from DNR included the recalibration changes (ITEM 9) and many other proposed items, none of which were discussed during the meetings about the model, with the exception that DNR had stated at the end of the meetings "they had concerns about pumping

wells.” That version of the rule was submitted to the EPC in the fall of 2007 and was delayed after submittal at the request of DNR. Stakeholders were again called together, written and oral public comments in opposition to what had been added by DNR to the proposed rule were made during the rulemaking public comment period, and a second version of the rule was brought to EPC. Numerous comments in opposition to most of the proposed rule with the exception of ITEM 9 were made by members of the regulated community. The rule was approved by the EPC and taken to the ARRC. Again comments in opposition of the rule were made by representatives of the regulated community, the ARRC directed DNR to perform an analysis of the impact of the rule and come back to the May 2008 ARRC. Again there were stakeholder meetings. Again there was no consensus reached and comments against the proposed rule except for ITEM 9 were made to the ARRC in their May 2008 meeting by representatives of the regulated community. No further meetings have been held with stakeholders we are aware of and a third version of the rule has now been submitted to the EPC. It is noted that this proposed rule version varies significantly from the original version of the rule brought to the EPC in 2007.

PMMIC, like other core stakeholders, have voluntarily spent hundreds of hours of staff time and tens of thousands of dollars working with DNR staff in an effort to reach an agreement on the proposed rule. ITEM 9 of the rule is based on scientific study of over 100 sites (chosen by DNR staff) with data that had been assimilated for 15 years or more in most cases. PMMIC, through a FOIA, requested a list of sites from IDNR in September of 2007 “that would demonstrate each public water supply well impacted by a LUST site where the T-2 software model did not predict the risk.” PMMIC only recently received a reply letter dated May 29, 2008 from DNR that listed five sites that in the DNR’s opinion documented their assertion that “the T-2 model and assessment procedures were not sufficiently predictive of risk to a pumping well(s).” After reviewing these sites: One does not involve a public water supply well and has not been completely characterized, two sites are dealing with compounds that are not chemicals of concern regulated by DNR LUST, one site has so many different potential hydrocarbon sources it has never been definitively determined what the source(s) of contamination actually are, and the last site there is no proven connection with the site in question and the impact to the well alleged. DNR has no scientific basis for what they are requesting for additional assessment protocol, and they have not answered the question posed to them to provide information on sites where this has occurred. The IUST Fund administrator has agreed to fund a study of potential sites where a possible impact to a public well could occur. DNR has declined this offer to do scientific study and have proposed a rule that would place a huge financial and operational burden on the regulated community without positive benefit to the environment and with no scientific basis for the requirement.

The additional assessment required in the proposed rule would require all LUST sites to perform an assessment with potential costs reaching \$150,000 or more, by DNR’s own admission, yet it is unlikely any additional remediation would ever be required at a LUST site as a result. Such costs could only be addressed by PMMIC in the way of premiums increases to our policyholders. Due to the ambiguous nature of the proposed rule and the lack of a specific protocol to follow in such a proposed investigation, and the far reaching authority it would lend to DNR, those annual premium increases may reach 50% or more if the proposed rule is approved. That constitutes an unnecessary waste of resources for a segment of Iowa small business that has recently seen significant attrition and consolidation while providing no positive impact to the environment.

We have worked diligently with stakeholders and DNR staff to reach an acceptable recalibration of the RBCA model as outlined in ASTM ES38-94 standards and 455B. 474. We have reached an impasse due in part to DNR's insistence to require assessment that is unnecessary and beyond the authority granted to them via statute. Our opposition is based on scientific study. As an insurer the worst case financial scenario we could envision is to have one of our policyholders responsible for contaminating a public water supply. The cost to PMMIC for such a situation is staggering to consider. We do not wish to take on additional or unquantifiable risks, but besides Item 9 of the proposed rule, there is nothing proposed that has been demonstrated in anyway to decrease the risk to the environment if implemented, and therefore is a waste of everyone who may be involved limited resources. We recommend that the EPC adopt Item 9 only and reject the balance of the proposed rule until a scientific justification for implementation for any proposed such assessment can be determined.

Our insurance policy works just like an auto policy. It's a contract between us and the owner/operator of the UST. Most of the policies have been enforced since 1990.

**JEFF HOVE**, Regulatory Affairs Manager for the Petroleum Marketers and Convenience Stores of Iowa, submitted the following comments regarding ARC 6596B, Proposed Amendments to Chapter 135 IAC.

Representing over 1500 members in the retail fuel industry, PMCI would like to extend our sincere appreciation for being allowed to have our members heard through the past meetings. We began the process of addressing the lack of scientific and statistical accuracy of the current Tier 2 RBCA model following the most recent IDNR Business Process Improvement (BPI) meeting. The Software Investigation Committee (SIC) was subsequently formed in order to examine the current RBCA T-2 software model. Results of the SIC were not surprising and should be a reminder to all that real-time data, when available, should be introduced when developing or reconstructing an assessment model.

The SIC, consisted of a broad range of stakeholders. Representatives from the Iowa Underground Storage Tank Fund, Casey's General Stores, EPI, Petroleum Marketers of Iowa, PMMIC and various groundwater professional consulting firms met with IDNR staff over the course of eight months to discuss the model. Additionally, the SIC enlisted the expertise of Dr. LaDon Jones of Iowa State University, who is the developer and designer of the RBCA software model.

The advisory committee focused on data, analyzed by Dr. Jones, of groundwater contamination for actual plumes versus the modeled plumes at 113 sites. The sites were selected by IDNR project managers and located throughout the state. The results confirmed that the current RBCA T-2 model is erroneously over-predictive. Data revealed that the model was 17.2 times greater than the observed actual contaminant plumes for diesel, and 8.6 times greater than the observed actual contaminant plumes for benzene (at the lowest concentration levels). As a result, the SIC advisory committee agreed that a new model was necessary. The committee continued to work, and ultimately reached agreement, on the new model described in ITEM 9. At that time, it was understood that the IDNR would propose administrative rules to memorialize the agreement.

Unfortunately, the IDNR chose to change the recommendations without notice to the other members of the advisory committee. On September 13, 2007 IDNR publicly proposed rule changes that were significantly different from the recommendation of the SIC advisory committee which were not supported by the committee.

ITEMS 1-8 would require the needless expenditure of regulated community resources and IDNR oversight resources with no added environmental protection. The IDNR has failed to identify sound examples on which this new regulatory requirement may prove necessary. Essentially, it is a “solution” in search of a problem. The regulated community will bear significant additional cost searching for a theoretical problem. This new process would create new liabilities for one industry while ignoring potential impacts from all other potential contaminant sources. The model version suggested by the advisory committee is 2.6 times over-predictive for benzene and 3 times over-predictive for diesel at the lowest measured contaminant level. The current model and the proposed version are designed to default to actual contamination levels so under-prediction of contamination cannot happen. Furthermore, both models assume a continual source and do not take into consideration that natural decay and biodegradation of hydrocarbons is a scientifically based fact resulting in the reduction of contaminant plumes.

We believe more time is needed to discuss and study the issues encompassed in ITEMS 1-8. These changes were proposed less than a year ago, and their potential impact is still being determined by the past advisory panel as well as new stakeholders. The advisory committee has spent countless hours recalibrating the existing model. We believe just as much time and attention should be given to ITEMS 1-8. While achieving clean and safe water is a goal we all support, we feel that these rules, as proposed, do little if anything to achieve that goal. Therefore, we respectfully request that you adopt only ITEM 9 of the proposed rules and allow the DNR and stakeholders to formulate a more pragmatic approach to DNR’s concerns in the near future. If the Commission cannot approve ITEM 9, then we ask that this rule making cease moving forward until all parties can agree on how to move forward.

**LEW OLSON**, House Republican Caucus staff addressed items 9 and 19.

Item 9 - deals with the DNR and UHL air quality bureau contract. This is more about the 15% increase in staff costs. I’m curious as to why such a large increase. There is a net increase of \$176,766.

Item 19 – dealing with the voting requirements of this commission. The Iowa constitution requires an absolute majority for the final passage of a bill in the Iowa legislature. This requirement is probably to protect the rights of the minority and to deter time. I think it’s important for the Commission to think about why the current requirement is there. You need to remember that when you take final action, you have the effect of the law.

**ANITA MAHER-LEWIS**, Certified Groundwater Professional submitted the following comments regarding Chapter 135 IAC – ARC 6596B.

I have participated in the process as the CGWP representative in the last round of rulemaking process. As a CGWP, I support protection of the public water supply. I also understand the

liability implications surrounding this receptor and how important it is to accurately identify contaminant movement and source.

This last rulemaking process proposed to strengthen what is currently in place already by increasing the receptor identification plume from 1000' to 2500'. As part of my role on the stakeholder committee, I was asked to gather and provide guidance from other states regarding how they approach the PWS situation. As such, I introduced guidance from other states to evaluate potential receptors and suggested to do so from a geological perspective, not just in sensitive areas, but at each site. These methods were adopted as part of the rule, and in addition, 14 other criteria were moved by the IDNR from the "only in vulnerable, sensitive areas" status to a "could be applied at anytime" status, at the end of the sessions. Additionally, a 5 year capture zone, initially only to be used in the vulnerable sensitive areas, was broadened to be potentially examined in all cases. This capture zone, a two dimensional model that is receptor specific will have the potential to be applied first to a situation, rather than looking a situation by UST source and plume movement, and aquifer specific which is where we started this process when I jointed the stakeholder meetings. There is no scientific basis or its drinking water well engineering consultants demonstrating the need for the 5 year capture zone to be used beyond the vulnerable aquifers.

All stakeholders under this type of regulation require a process that is credible, defensible and repeatable. I don't believe this rule will provide this type of process. I do however, believe this proposed rule will create wellhead protection plans in reverse on the backs of the underground storage tank industry, and with no concurrent rule coming our of contaminated sites section it is hard to believe otherwise. I also believe that his rule with how it is set up will require owner/operators to prove a negative that is prove that no petroleum substance, let alone theirs, has ever or will ever impact any PWS wells with a 5 year capture zone intersecting their site.

This open-ended process as it stands leaves industry and CGWPs open to report rejection from IDNR for any reason and may create liability issues for us both. Most importantly, the rule as it stands, will not resolve potential PWS issues. At this time, I can only support Item 9 in the proposed rule.

**KATHY MORRIS**, Director of the Waste Commission in Scott County stated her support of the Department's denial of the petition for rulemaking on the Chapter 113 rules. As previously stated, they were promulgated in 1994. We actual read the federal regulations and built our landfill with the subtitle D specifications with the synthetic liner. We did this for many reasons. Iowa's regulations need to be up to the federal regulation standards. We have been going through the landfill rules for over two years now. We have gone through numerous comments and meetings. We ask that you approve the staff's recommendation to deny the petition for rulemaking.

**CHRISTINA HENNING**, with Prairie Sky Productions submitted the following comments:

Under separate cover and by blind cc email, I sent many of you the Jefferson Bee article which details events in Greene County since the EPC hearing of May 13 re: Prestage 309. Several of the emails came back, perhaps the mailboxes are full. Others were undeliverable.



You may ask: Why is this important to ME?

Could you ensure your group knows how this situation has galvanized public opinion? I don't know that that's a bad thing necessarily; it does make all the stakeholders look at their options.

Of course injunctions are costly, and appeals take time. DNR's attorney told me that we have 30 days from when "we" were aggrieved – that'd be June 13<sup>th</sup> or so. Not much time to do what I'd like to do:

While this issue is HOT, and undecided, and with the implications being what they are for ALL of the Raccoon River Watershed, including Des Moines, could a "STAY" be granted? For all buildings with a pit, a temporary hold on the entire permitting process for a year? Six months?

Could we all work out some common sense approach to address?

- ❖ Water and air protection
- ❖ The civil rights of the neighbors
- ❖ Siting AND best management practices
- ❖ The producers' mission

I urge you to consider the merits: And in doing so, protect the city of Jefferson, Greene County, the Raccoon River and its watershed, Des Moines and even states south of us?

Maybe all of Iowa could benefit from this case?

I'm not a lawyer --- I don't know the rules --- I hesitate to even broach on the subject! But I know all of you and the many of us who have been working on livestock regulations for nearly forever, would like to protect our Iowa natural resources, our citizens and communities AND produce the pork, corn and soybeans Iowa is known for.

If you feel this idea has merit. I know that many of the Greene County stakeholders would support such an approach and have heard from friends statewide who are working on this issue. Your legislators might be helpful and I know there are others in the legislature and state government who would support us. You undoubtedly know who could be influential in this endeavor in your area.

Thank you for your consideration and your efforts on behalf of Greene County and Iowa's Natural Resources.

**KEITH FREIE**, with the Farmers Cooperative company said he agrees with Mr. Sexton's comments regarding manure application on frozen ground. This calendar year our company will approach manufacturing and delivering 1 million ton of feed. My concern is that when you look at the manure application to frozen ground you might be in the wrong direction. Of all the people that we deliver feed to I question whether or not the larger entities ever apply liquid hog manure on frozen ground. I think the DNR is completely inundated with regulations that they

don't have the people or funding to enforce. I question the direction, not intent of where you are heading with this.

-----End of Public Participation-----

**NOTICE OF INTENDED ACTION: 567 IAC CHAPTER 1-AMENDMENT TO THE COMMISSION'S QUORUM AND VOTING REQUIREMENTS IN RULE 1.6.**

Henry Marquard said that this rule has come about due to the lack of Commissioners. Since December we've had seven commissioners rather than the nine that the statute provides for. So the question has come into play as to what the majority of the members of the Commission means. The rulemaking is an attempt to sort this out.

The proposed amendment would clarify the voting requirements for the Commission. The number of commissioners required for a quorum, to take official action and to close a meeting would be specified rather than the current reference to a majority of the members of the Commission. In addition, for official action by the Commission the requisite number of commissioners would vary depending on the number of commissioners currently appointed.

*Motion was made by Charlotte Hubbell to initiate expedited and ordinary rulemaking in accordance with Chapter 17A.4(1&2) on the grounds that we are not adopting a new rule but are clarifying an existing rule in accordance with common law principles, case law, Iowa precedent with regard to a decision in the Iowa Senate in 2002 and according to established principles of administrative law, which say that an agency must be allowed to act and that requiring a super majority of the vote when only a simple majority is mandated by statute impedes us in our ability to act. I would request that the rule should read as written and distributed by the DNR legal staff. Seconded by Susan Heathcote.*

Henry Marquard read the current rule 1.6 (1&2) and the proposed rule with the motion changes.

Charlotte Hubbell said that she agrees that some of the urgency to proceed with expedited rulemaking has been ameliorated by the appointment of Commissioner Stimson but we do not have a ninth member. We don't know when that appointment will happen. There is a definite disagreement between members of this commission, DNR legal staff, and the Attorney General as to what the rule in this case intends when it says a concurrence of the majority of members on the commission is necessary to take action. They are arguing that we count all members to which the commission is entitled and there are a group of us on this Commission who believe that when we functioned as a group of 7, we only needed 4 votes to take action. We have bypassed whether rulemaking is even necessary. I had arguments saying that it wasn't necessary but in the interest of expediting this matter I believe we should adopt emergency rulemaking under Chapter 17A.4(2). I think we can argue that ordinary rulemaking is both unnecessary and impractical. It's unnecessary because we are merely clarifying the meaning of our own rule, which we are allowed to do under established administrative law principles. We are using the common law definition of what this means. Although Iowa has never decided this issue, in Pennsylvania the Supreme Court has said that a majority of the members of the commission excludes counting vacant seats. Second, it's unnecessary also because the rule as being

interpreted serves to undermine public policy and fails to protect the public's interest. It hamstrings us in our ability to take action. It impedes us in our ability to perform the duties we have been given under Chapters 455A and 455B. We must be able to act and four times since December we have been unable to act and there has been a deferral until another meeting and it's taken up time of the Commission with debate. Third, the rulemaking in this instance is impracticable. [Charlotte read comments from Arthur Bonfield, a professor of law. The author of the Iowa Administrative Procedure Act.]

David Petty said that he doesn't understand the reason for emergency rulemaking on the day it's being presented.

[Commissioners discussed the definition of a member and the positions appointed by the Governor.]

*Motion was made by Susan Heathcote to amend the language on the first sentence of A and B - Voting requirements: If there are eight or nine commissioners currently appointed to the EPC then it shall take the affirmative votes of five.*

David Petty said that if Commissioners leave before their term expires then they created the situation. It's not that the Governor is the problem. I don't think we need to change our voting rules.

Susan Heathcote said that she understands David's point but there are periods of time when important matters are brought before this commission that we need to move forward on. We need clear rules in situations like this.

Dave Sheridan, with the Attorney General's office said that the Attorney General has nothing to say about whether you should adopt this rule. That is your decision. It's also for you to decide whether to go emergency and that's what I would like to address. In normal rulemaking, there are provisions for notice, advance notice, public comment, public hearings and response to the those comments, adjustments to the rule and then publishing. Emergency rulemaking in appropriate circumstances is a way to side step those public participation requirements. There are specific reasons under the Code in which you can do that. Where you can appropriately find that it's unnecessary to hear from the public and it's impracticable to hear from the public. Now obviously, that's a heavy burden to do that. In this case, this change in the rule, I would respectfully say is not a clarification. This rule was adopted 22 years ago by this Commission. At that time, the DNR recommended to the EPC to adopt what the legislature adopted that you can take action with a mere majority of a quorum. This body said no. Commissioner Keith Uhl stated "that he disagrees with allowing a majority of a quorum to pass a measure. He feels it's inappropriate to have less than a majority of the Commission on matters of public policy." Commissioner Applegate disagreed but Clark Yager agreed with Mr. Uhl. The motion passed seven to one. That's why you have the rule. I understand there have been a few votes where you didn't get five votes in the last six or seven months. Of those votes, most of them dealt with officer positions and you obviously coped with that. The emergency obviously dissipates now that you have eight commission members. So is it unnecessary or impractical or contrary to the public interest to hear from the public on this? No. There is not a justification for emergency

rulemaking on this issue. There may well be citizens who upon hearing of this proposed change may disagree on this or have other alternatives. Our advice is to approve the Notice of Intended Action but there is not a basis to do emergency rulemaking.

Henry Marquard said that it was the Chair's matter to bring this matter to head when dealing with the Prestage issue. My personal view is that this is in fact a clarification and that public comment would not be necessary. We're clarifying what the majority of the Commission means.

Charlotte Hubbell said that she also has a copy of the minutes from the meeting mentioned by Dave Sheridan. It does say that the Department recommended that we not establish a public hearing on this proposal. Mr. Sheridan said that they did in fact do that. I will also say that the minutes reflect that the Department recommended that the Commission adopt the proposed language to avoid the situation of a Commissioners absence being an automatic "no" vote. I have talked to two Commissioners and the intent that they remember from that meeting was that only members present be counted. We're just saying that only members appointed be counted. Adopting emergency rulemaking does not preclude public participation. They are entitled to make comments, they just do so after the rule goes into effect. My understanding of emergency rulemaking is that the rule goes into effect when it is published in the Administrative bulletin.

David Petty asked if we could vote on expedited rule and the ordinary rulemaking separately?

Henry Marquard agreed that we should separate the vote. The Commission's intent is that the rule becomes effective when it's filed.

*First vote is to adopt the amended rule for expedited or emergency rulemaking: Susan Heathcote – aye; Martin Stimson – aye; Paul Johnson – aye; Charlotte Hubbell – aye; Sue Morrow – aye; David Petty – nay; Henry Marquard – aye. Motion carried.*

*Second vote is to move forward with this rule as Notice of Intended Action or ordinary rulemaking. Motion carried unanimously.*

The Department will need to set a public hearing date regarding this rulemaking on or after July 22<sup>nd</sup>.

**APPROVED AS AMENDED**

**DENIAL OF PETITION FOR RULEMAKING - FILED BY THE SOUTH DALLAS COUNTY LANDFILL AGENCY ET AL RE: IAC CHAPTER 567-113 "SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NONHAZARDOUS WASTES"**

Larry McCullen, Attorney representing the ten petitioner landfills.

South Dallas County Landfill Agency  
Landfill of North Iowa  
Metropolitan Area Solid Waste Association  
Waste Management of Iowa  
Des Moines County Regional Solid Waste Commission  
Page County Landfill Association  
Winneshiek County Solid Waste Agency  
County Solid Waste Agency  
Solid Waste Management and Regional Environmental Improvement Commission

What we're asking in the petition is to simply the opportunity to address some of the issues that we were not allowed to address during the initial rulemaking because of a misunderstanding between EPA Region 7 and the DNR.

Secondly, we're asking that the petition rulemaking go forth because we feel there needs to be some tweaking.

During the rulemaking process our clients were told that we couldn't address some of the issues because EPA was mandating a certain course of action. So some of the rule was not addressing our concerns. Now we want to do that. Historically the Department has allowed landfills to do construction design and operations if a permit has been issued and new rules come along and change and they don't require landfills to retroactively implement those rules. The rule that was adopted is a complete shift in the Department's philosophy in regard to that. We're simply asking that you go back to that rule.

This also effects items "e" & "g" under the Department's rule. They are now more restrictive than those required under Subtitle D with no explanation for why they are. This creates a financial burden for these landfills.

Under item "b", we just wanted some clarifications on the term aquifer and statistically significant increase.

The last area is item "h" leachate evaporation. It's not leachate recirculation as stated by the Department. This is an economic issue. Allowing the landfills to do some leachate evaporation would take some of the burden off the POTW's where they would have to truck the leachate for processing, which can also cause some environmental concerns with spillage. Again, it's an economic issue and the proposal we're suggesting does not pose any environmental hazards.

It's been stated a couple of times that we are trying to make these rules less protective. That is not true. These are all Subtitle D compliant landfills. These rules are consistent with the federal standards that are in place today. What we want to accomplish with this petition is two things: 1) achieve what was first proposed by EPA when adopting Subtitle D; and 2) Return the regulation of Iowa landfills to where EPA intended when it adopted the Subtitle D requirements. We did meet with the Department last month to discuss some of these issues and it was indicated that

some of our concerns do merit further discussion. We want the Commission to allow this petition to go forward so we can further address these issues.

Hal Morton with the Des Moines County Regional Solid Waste Commission said that he has been a part of the rulemaking process from the start. Issues were raised early and often at stakeholder meetings to the DNR and were not seriously considered. DNR was under the impression that certain portions of the rulemaking were mandated by EPA. It was not until after the EPC approved this rule in June that EPA clarified its position on this item. Allowing the petition to proceed through the rulemaking process will provide the opportunity for public debate. Only then can the Director fairly claim that a silent majority of landfills like these rules the way they are. The petition targets the areas in the rule that were excluded from fair consideration in the first place. Iowa's water resources particularly surface water quality are threatened by a number of industry and agriculture resources but contamination from lined landfill cells of any design are not amongst the significant threats.

Justification for being more stringent than the federal standards is based on the false premise that groundwater in Iowa is significantly more vulnerable to landfill impacts than groundwater in the rest of the country.

To allow comments for which comments were rejected during the previous rulemaking, I urge you to allow the petition to proceed through the normal rulemaking process which will include a full public comment procedure.

Don Vogue, Public Works Director for the City of Dubuque and Dubuque Solid Waste Commission also favors the petition.

Vicki Morehead from Adel stated her support for the petition for rulemaking. The petition will provide the opportunity to fully discuss all of the issues in the public forum that we were unable to do during the public process. The DNR's NOIA to change a portion of the rule was an attempt to satisfy the ARRC's objection to the rules. I don't believe it completely addresses the takings issue. We at South Dallas are in compliance with Subtitle D and we will continue to do so. Please allow this petition to move forward.

Lannie Vondale, Council for IERC of Iowa County. It's clear that there are two overarching issues. Having to compile and deal with the rules and having additional costs ranging in the millions per landfill with no demonstrated benefit. Please keep the costs in mind when reviewing the technical data.

Jon Tack, DNR attorney said that we have a rulemaking that this Commission undertook last June and the rules did not take effect until December 2007. We are still in the implementation period. They will not be fully implemented until January 2011. In the proposed petition, we've been trying to provide specific citations to the documents preamble to the rule that showed in fact these concerns were heard and addressed. There was one issue where EPA had said one thing and did not clarify. We are trying to address the one issue. We feel that we fully addressed all other areas. It's the Department's request that you deny this petition for rulemaking and allow us to implement these rules.

*Motion was made by Charlotte Hubbell to accept the denial for the petition. Seconded by Paul Johnson.*

Commissioners went on to discuss how landfills in general will be affected and what is required.

*Motion carried unanimously to deny. Marty Stimson abstained from voting due to the lack of knowledge about the petition.*

**PETITION DENIED**

### **SOLID WASTE ALTERNATIVES PROGRAM – RECOMMENDATIONS**

Tom Anderson, presented the following information.

The Department received thirteen (13) proposals, requesting \$757,020 in financial assistance, for consideration during the April 2008 round of funding. Seven (7) projects were selected for funding. If approved, the Department will award \$297,829 in a combination of forgivable loans and zero interest loans.

The review committee consisted of five persons representing the Land Quality Bureau (Tom Anderson, Jennifer Reutzell), Iowa Society of Solid Waste Operations (Scott Smith), Iowa Recycling Association (Jeff Rose), and the Iowa Waste Exchange (Julie Plummer).

The table below summarizes recommendations by applicant and project type and by the type of award.

Recommended By Applicant Type	# Awards	Award Amount	Forgivable Loan Portion
Local Government	3	\$118,058	\$63,058
Private For Profit	3	\$167,959	\$47,859
Private Not For Profit	1	\$11,812	\$11,812
Recommended By Project Type	# Awards	Award Amount	Forgivable Loan Portion
Best Practices	6	\$278,571	\$103,471
Market Development	0	\$0	\$0
Education	1	\$19,258	\$19,258
Type of Award	# Awards	Award Amount	Forgivable Loan Portion
Forgivable loan only	5	\$82,729	\$82,729
Forgivable and 0% loan only	2	\$215,100	\$40,000
3% interest loan only		\$0	\$0

At this time, the Department is requesting Commission approval to enter into contracts with selected applicants whose awards will be in excess of \$25,000 subject to satisfactory review of

additional requested information, review of business plans, negotiation of budget, match, deliverables, and other requested information.

*Motion was made by David Petty to approve the recommendations as presented. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CONTRACT - UNIVERSITY HYGIENIC LABORATORY (UHL) - IMPAIRED WATERS MONITORING AND ASSESSMENT**

Tim Hall, DNR Bureau Chief of Iowa Geological and Water Survey presented the following information.

**Recommendation:**

The Department requests Commission approval of a contract for the amount of \$381,952 with the University Hygienic Laboratory. The contract covers a variety of water monitoring and assessment activities related to the development of restoration plans for impaired water bodies. These activities are designed to obtain specific information needed to better define the impairments through the stressor identification process, and for the development of water quality restoration plans or Total Maximum Daily Loads (TMDLs). Site specific data are needed to better define the impairments and identify pollutant loads or other non-pollutant based stressors, such as habitat alteration that contribute to the impairments. The data collected under this contract will help technical staff make these determinations. The contract period is from July 1, 2008 – June 30, 2009.

**Funding Source:**

Federal funding for this contract is provided through Section 319 of the Clean Water Act.

**Background:**

In this contract, UHL will collect data for 5 lakes and 12 stream segments that have been prioritized for TMDL development. Various types of stream monitoring and assessment activities will be conducted, including: biweekly and storm event sampling for conventional and toxic water quality parameters; continuous monitoring of dissolved oxygen and water temperature; surveys of benthic macroinvertebrates and fish; stream flow measurement; physical habitat assessment; sediment and water contaminant screening. Lake sampling will include the collection of 2 additional samples per lake during the summer period (to be added to the ambient water monitoring schedule). Samples will be analyzed in the laboratory for a suite of water quality parameters and trophic state indicators such as nitrogen, phosphorus, suspended solids, and turbidity. A vertical depth profile of dissolved oxygen, pH, specific conductance, and water temperature will also be obtained on each sampling occasion.

Sue Morrow asked if the Commission could receive the contract timelines and how they all fit together.



Tim Hall agreed to follow up with this information.

Paul Johnson said that the general public probably doesn't know the quality of their water. This monitoring data would be good for the public to have. Are we looking for options to share this?

Richard Leopold said that we are looking into this. Environmental indicators and working with the public are a part of the Department's attempt to inform the state.

*Motion was made by Susan Heathcote to approve the contract as presented. Seconded by Paul Johnson. Motion carried unanimously.*

**APPROVED AS PRESENTED**

## **CONTRACT – UNIVERSITY OF IOWA - WATER RESOURCE ASSESSMENTS**

Charles C. Corell, Chief of the Water Quality Bureau presented the following information.

### **Recommendation:**

Commission approval is requested for a one year, \$213,086 contract with the **University of Iowa** to provide 4 staff persons. The contract will begin on July 1, 2008 and terminate on June 30, 2009. The staff persons will be directed to work on 2 projects, Use Assessment/Use Attainability Analysis and Aquatic Ecosystem Monitoring.

The University of Iowa's responsibility in this contract is to provide 4 full time staff. These staff will be under the direct supervision of DNR supervisors. The DNR is responsible for assigning tasks and ensuring that the project objectives are met.

### **Funding Source:**

There are 2 funding sources for this contract. The State General Fund will be used to cover Project 1 UA/UAA's at a not to exceed amount of \$94,000 and EPA Federal Grant #66.605 will be used to cover Project 2, Aquatic Ecosystem Monitoring at a not to exceed amount of \$119,086. DNR supervisors will track the staff time spent on each project.

### **Background:**

UA/UAA: The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the DNR as a step-by-step process to gather site-specific field data on stream features and uses. The DNR then assesses available information to determine if the "presumed" recreational and aquatic life uses are appropriate.

According to Iowa Code 455B.176A, the DNR must evaluate any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing a NPDES permit for an affected facility, the DNR will complete a UA/UAA for the receiving stream or stream network.

**Aquatic Ecosystem Monitoring:** EPA and its state, tribal, federal and other partners are beginning work on a survey of the nation's rivers and streams. This survey will use a random sampling design to provide regional and national estimates of the condition of rivers and streams. States and tribes will use consistent sampling and analytical procedures to ensure that results can be compared across the country and over time. This survey will combine a first-ever assessment of the nation's rivers with the second national survey of small wadeable streams (see the first such survey, The Wadeable Streams Assessment, at [www.epa.gov/owow/streamsurvey](http://www.epa.gov/owow/streamsurvey)). The Wadeable Streams Assessment provided the baseline against which survey results on streams will be compared.

**Purpose:**

**UA/UAA:** The first project is to continue to complete Use Assessment/Use Attainability Analysis (UA/UAA) work. The UA/UAA project first began in 2006 with a directive from the legislature to complete UA/UAA's for streams that receive an NPDES discharge before an NPDES permit could be renewed. All of the field work for the UA/UAA's was completed by December 2007, but data analysis for approximately 1,500 UA/UAA's remains to be completed. The work that remains to be completed includes analyzing the field data, determining if a follow-up field visit is warranted, performing data entry and refinement and quality assurance checks, contacting public land managers and county conservation boards per established protocols, and determining the stream use designation recommendation for each stream assessment.

**Aquatic Ecosystem Monitoring:** For the second project, completion of sampling activities for the U.S. EPA's National Rivers and Streams Assessment (NRSA) project is the primary objective. Staff will obtain field environmental data from Iowa's aquatic resources (e.g., rivers, streams, lakes, wetlands) in support of federal and state monitoring projects. Stream sampling variables include: algal biomass and composition, benthic macroinvertebrate and fish assemblages, fish tissue contaminants, physical habitat, sediment enzymes, and water chemistry. Sampling will be conducted at approximately 46 random sample sites across Iowa ranging in size from small perennial creeks to large interior rivers. Approximately 5-10 reference sites will also be sampled to provide comparative data from least disturbed stream habitats. Specific sampling locations will be determined following desktop and field reconnaissance.

*Motion was made by Charlotte Hubbell to approve the contract as presented. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CONTRACT—IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT - WATER QUALITY ADVOCATE**

Charles C. Corell, Chief of the Water Quality Bureau presented the following information.

The Department requests Commission approval of a contract in the amount of \$75,000 with the Iowa Department of Economic Development (IDED) for the Water Quality Advocate position.

The contract period will be from July 1, 2008 to June 30, 2009. The source of the funding for this contract is the NPDES Fees Fund. This is the second contract between DNR and DED for the Water Quality Advocate position.

For this contract period the focus of the Water Quality Advocate will be to assist small communities with understanding and complying with their wastewater requirements including applying for their National Pollutant Discharge Elimination System permits and to lead efforts to assist unsewered communities address their wastewater issues.

#### Additional Information

- ◆ The Water Quality Advocate provides assistance to entities requiring National Pollutant Discharge Elimination System (NPDES) permit (pursuant to 2006 Iowa Acts, Chapter 1178, Section 27).
- ◆ A focus of the Water Quality Advocate (WQA) is to assist communities in understanding and complying with its wastewater requirement, including applying for its NPDES permit.
- ◆ The WQA focuses efforts towards the unsewered communities initiative.
- ◆ The WQA also serves as an objective source of information and assistance to small businesses, the Iowa Department of Economic Development (IDED) and the Iowa Department of Natural Resources (IDNR).
- ◆ Initially, with the WQA introduction to other state agencies, private associations, communities and businesses, the overall response was welcoming. Some comments included, "Good, Iowa needs this sort of position."

#### Outreach and Education

- ◆ Presentations
  - Iowa Rural Water Association
  - IDNR-IDED Lunch 'N' Learns
  - Iowa Association of Municipal Utilities Annual Conference
  - Iowa Farm Bureau
- ◆ Workshops
  - NPDES Permits: The Application Process, wastewater operators-city clerks
  - Stormwater Basics, construction industry
- ◆ Outreach
  - WQA Factsheet
  - Unsewered Community Factsheet
  - Website [http://www.iowalifechanging.com/business/water\\_quality.html](http://www.iowalifechanging.com/business/water_quality.html)
  - Assist internal IDED staff, e.g. permitting requirements, DNR regulations
  - Assist Utility Management Organizations
  - Assist Business Planning/RFP the State Revolving Fund
  - Travel to towns, wastewater facilities, unsewered communities
- ◆ Other Projects
  - Environmental Finance Center
  - 2008 NPDES Workshops

- Updating the Unsewered Community Priority List
- 2009 Strategic Plan for Unsewered Communities
- ◆ From July 2007 to April 2008, approximately, 2400 people have utilized the WQA.

*Motion was made by Sue Morrow to approve the contract as presented. Seconded by David Petty. Motion carried unanimously.*

**APPROVED AS PRESENTED**

## **ENVIRONMENTAL MONITORING AND LABORATORY SERVICES – UNIVERSITY OF IOWA HYGIENIC LAB**

Barbara Lynch, Chief of the Field Services and Compliance Bureau presented the following information.

The Department requests Commission approval of a contract in the amount of \$359,766 with the University of Iowa Hygienic Lab with the intent of aiding the Director of the Iowa Department of Natural Resources in determining the quality of the environment of the State of Iowa by providing field and laboratory services in support of environmental control programs and summarizing and reporting environmental quality data.

The contract scope of work includes:

- Water Quality Monitoring: Influent and effluent composite samples; fish kill monitoring; emergency response; fish tissue monitoring, and storm water runoff.
- Water Supply Support: Drinking water and public water supply monitoring.
- Director's Office: One part-time staff position to represent the Department on various boards and committees and coordinating Department activities involving agriculture with commodity organizations, wildlife groups, environmental organizations, federal and state agencies, and other stakeholder groups.
- UST Corrective Action Specialist: One staff position to manage corrective actions at high risk leaking underground storage tank (LUST) sites
- Dam Safety Inspection: Three part-time staff positions to inspect all dams (nearly 300) in the state that are classified as "major"

The University Hygienic Laboratory (UHL) is the State of Iowa's Environmental and Public Health Laboratory. The Department has several contracts with the laboratory to provide analytical and fields services.

This contract is federally funded through the U.S. EPA Performance Partnership Grant and the EPA Section 319 Nonpoint Source Management Program.

*Motion was made by David Petty to approve the contract as presented. Seconded by Paul Johnson. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CONTRACT – UNIVERSITY OF NORTHERN IOWA'S (UNI) IOWA WASTE REDUCTION CENTER – SMALL BUSINESS ASSISTANCE PROGRAM**

Christina Iiams, Program Planner for the Air Quality Bureau presented the following information.

**Recommendation:**

Commission approval is requested for a one year, **\$550,000.00** contract with the **University of Northern Iowa (UNI)**; Cedar Falls, Iowa for the ongoing technical assistance to small businesses as mandated by Section 507 of the Clean Air Act. The contract will begin on July 1, 2008 and terminate on June 30, 2009. This contract is an Iowa Code Chapter 28E agreement.

**Funding Source:**

This contract is paid for through cost reimbursable payments funded solely by Title V program fees.

**Background:**

The Small Business Assistance Program, which is mandated by Section 507 of the Clean Air Act, provides technical and non-technical assistance to small businesses. This contract establishes the requirements of Iowa's technical assistance program.

The State of Iowa has established that the University of Northern Iowa will fulfill the technical assistance component through the Iowa Waste Reduction Center's (IWRC) Iowa Air Emission Assistance Program (IAEAP).

**Purpose:**

The purpose of this contract is to sustain a small business assistance program pursuant to Section 507 of the Clean Air Act Amendments of 1990 and to outline the activities and projects related to providing various aspects of technical assistance to Iowa's small businesses. Particular emphasis is placed on assisting small businesses with air permitting requirements, emission estimations, and determination of regulatory status and compliance requirements.

*Motion was made by Susan Heathcote to approve the contract as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CONTRACT – POLK COUNTY BOARD OF SUPERVISORS - AIR QUALITY PROGRAM**

Christina Iiams, Program Planner for the Air Quality Bureau presented the following information.

**Recommendation:**

Commission approval is requested for a one year, **\$731,299.00** contract with the **Polk County Board of Supervisors – Air Quality Program**; 5895 NE 14<sup>th</sup> Street; Des Moines, Iowa for the ongoing implementation of the Polk County air quality construction permit, Title V operating permit, and ambient air monitoring program mandated by the Clean Air Act Amendments of 1990. The contract will begin on July 1, 2008 and terminate on June 30, 2009. This contract is an Iowa Code Chapter 28E agreement.

**Funding Source:**

This project will be funded by cost reimbursable payments from the following sources:

- Title V program fees - **\$540,261.00**
- 105 federal grant dollars - **\$171,038.00**
- 103 federal grant dollars - **\$20,000.00**

The Polk County Board of Supervisors has a funding commitment of \$211,366.00.

**Background:**

The Polk County Air Quality Division has a certificate of acceptance pursuant to Iowa Code Section 455B.145, as implemented in 567 IAC Chapter 27. This contract sets out the requirements for successful implementation of an air program within Polk County.

**Purpose:**

The purpose of this contract is to ensure that Polk County meets the conditions necessary to retain a Local Program as specified in Iowa Code § 455B.145 and 567 Iowa Administrative Code (IAC) Chapter 27 and to specify the extent and manner of cooperation between the two agencies in conducting programs for the abatement, control, and prevention of air pollution within Polk County. Particular emphasis is placed on the collection and assessment of information regarding air quality, the permitting of sources of air emissions, the enforcement of emission limits, and the attainment and maintenance of ambient air quality standards.

*Motion was made by Susan Heathcote to approve the contract as presented. Seconded by David Petty. Motion carried unanimously.*

<b>APPROVED AS PRESENTED</b>
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**CONTRACT – LINN COUNTY PUBLIC HEALTH - AIR QUALITY PROGRAM**

Christina Iiams, Program Planner in the Air Quality Bureau presented the following information.

**Recommendation:**

Commission approval is requested for a one year, **\$728,548.00** contract with the **Linn County Public Health – Air Quality Program**; 501 13<sup>th</sup> Street, NW; Cedar Rapids, Iowa for the ongoing implementation of the Linn County air quality construction permit, Title V operating permit, and ambient air monitoring program mandated by the Clean Air Act Amendments of 1990. The contract will begin on July 1, 2008 and terminate on June 30, 2009. This contract is an Iowa Code Chapter 28E agreement.

**Funding Source:**

This project will be funded by cost reimbursable payments from the following sources:

- Title V program fees - **\$584,432.00**
- 105 federal grant dollars - **\$126,652.00**
- 103 federal grant dollars - **\$17,500.00**

The Linn County Public Health has a funding commitment of \$208,573.00.

**Background:**

The Linn County Air Quality Program has a certificate of acceptance pursuant to Iowa Code Section 455B.145, as implemented in 567 IAC Chapter 27. This contract sets out the requirements for successful implementation of an air program within Linn County.

**Purpose:**

The purpose of this contract is to ensure that Linn County meets the conditions necessary to retain a Local Program as specified in Iowa Code § 455B.145 and 567 Iowa Administrative Code (IAC) Chapter 27 and to specify the extent and manner of cooperation between the two agencies in conducting programs for the abatement, control, and prevention of air pollution within Linn County. Particular emphasis is placed on the collection and assessment of information regarding air quality, the permitting of sources of air emissions, the enforcement of emission limits, and the attainment and maintenance of ambient air quality standards.

<i>Motion was made by Charlotte Hubbell to approve the contract as presented. Seconded by Sue Morrow. Motion carried unanimously.</i>
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<b>APPROVED AS PRESENTED</b>
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**CONTRACT - IOWA STATE UNIVERSITY EXTENSION SERVICE – MANURE APPLICATOR CERTIFICATION TRAINING**

Gene Tinker, with the Animal Feeding Operations presented the following information.

The Department requests Commission approval of a contract in the amount of \$170,678 with Iowa State University Extension Service to provide manure applicator certification training and testing for the time period of July 1, 2008 through June 30, 2009. The training and testing are pursuant to HF 644 and HF 2494.

The purpose of this contract is to support activities to develop manure certification training and testing materials for commercial manure applicators and confinement site manure applicators. Topics covered in the training materials will include: certification and manure management requirements of Iowa law and DNR rules; proper procedures for the storage, handling and land application of manure; the potential impacts of manure on surface and groundwater; the development of safety and emergency action plans; and sources of additional technical and educational assistance.

Funding for this contract is provided by fees collected from the Manure Applicator Certification Program.

*Motion was made by David Petty to approve the contract as presented. Seconded by Susan Heathcote. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – FY 2009 INTENDED USE PLANS**

Chuck Corell, Water Quality Bureau Chief presented the item. For more details on the Clean Water and Drinking Water SRF – FY 2009 Intended Use Plan, please visit our website: <http://www.iowadnr.com/epc/08jun/14.pdf>

*Motion was made by David Petty to approve the Clean Water and Drinking water SRF loan fund as presented. Seconded by Sue Morrow. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**GREENE COUNTY’S PETITION FOR RE-HEARING ON PRESTAGE FARMS LLC**



Randy Clark, DNR Attorney said that the Department presented its proposed decision regarding the Prestage Farms permit application last month as meeting all of the statutory and rule requirements and that's still our position. A final permit was issued on May 15, subsequently Greene County filed its application for a re-hearing.

Larry McLellan, attorney from West Des Moines representing Greene County Board of Supervisors. When this matter first came to me about a week ago, it appeared that there was some confusion about the interpretation of the vote that was taken. I don't think there is any question that the vote that was taken last month was valid. There was a vote 4 to 3 to deny the permit and then there was a motion to reconsider at which time the vote remained 4 to 3 to deny. We have a valid vote by this Commission on two occasions to deny the permit. Because of that confusion and the Notice of Intended Action filed by the Department on May 29<sup>th</sup>, I felt it was appropriate that the Commission take a look at the interpretation that was made during the Commission hearing after the vote was taken last month. I'm not asking that the Commission re-hear this issue I'm asking you to look at the effect of the vote. I think in regards to the Commission's actions today that vote is effective. And that vote denies. The question before the Commission today is, What did that vote mean? We're asking that the Commission uphold the vote that was taken last month. The case does not need to be re-heard. A 4 to 3 vote is a valid vote by the Commission and it means that the permit is denied. I'm asking you to simply indicate that it was an incorrect interpretation of the law and to uphold the vote to deny the permit.

Lynn Seaba, attorney representing Prestage Farms of Iowa, said that the permit was at issue at the last EPC hearing on May 13. We're here today on the motion made by Greene County for a re-hearing. Our brief simply states that the Commission's action taken at the last meeting was the final agency action. It was not a contested case. This was considered as other agency actions. This was clearly not a contested case. Once final agency happens, what then? There is an opportunity for an appeal; that opportunity for an appeal is judicial review. The brief sent by the County is what I would expect as the argument to be determined in District Court pursuant to a judicial review of the administrative agency action. We can not ignore the law or statutes which give the authority to the Commission and to the Department in which Prestage Farms of Iowa is expected to follow. Prestage Farms of Iowa submitted their permit application in February of this year and their matrix. They've also done a public hearing and to the EPC once. The permit has been issued. Construction contracts have been prepared but nothing started due to weather. At this point, to bring this matter back before the EPC for a second hearing would be prejudicial to Prestage Farms of Iowa, which has followed the law and regulations. At this point, the remedy for the County would be judicial review. They have 30 days from when the agency action occurred to file a petition in District Court for judicial review. At this point, the agency has taken its final agency action. At this point, we would welcome a judicial review which is an appropriate remedy for the County. We ask that the Commission not grant a re-hearing of this matter at this time.

Larry McLellan said that the Commission voted 4 to 3 to deny the permit. The only reason we are back is because the Commission was not provided proper legal precedence as to what the vote meant. What we had was a 4 to 3 vote with a majority of the Commission to deny. It was

simply a misinterpretation of the effect of that decision. The decision is to deny the permit and we're asking the Commission to uphold that vote.

Lynn Seaba said that they would like to reiterate that the final agency action has happened and the next step is judicial review. Once the decision has been made, we can't second guess ourselves and try to go back and change that decision at the same level. We ask that you let the process move forward.

Henry Marquard asked Greene County if they were granted a re-hearing, what would they present?

Larry McLellan said that they would simply be arguing the effect of the Commission's vote. That's the point of what we're asking for. We're not asking for a re-hearing.

Lynn Seaba said that it is our position that the final agency action has happened and rather than reconsider it here it should go forward to District Court.

Charlotte Hubbell asked for an explanation as to why this is not considered a contested case.

Randy Clark said that the statute says it may be a contested case. As we worked on proposed rules, we talked about this and decided to put into the rule that it is not a contested case because the problem we saw was that the requirement that the Commission render a decision in 35 days seemed very difficult for a contested case. That's why we put in the language that it is not a contested case.

*Motion was made by Charlotte Hubbell to go into Closed Session for the purpose of getting legal advice concerning a matter for which litigation is anticipated. Seconded by Susan Heathcote. Roll call vote went as follows: Paul Johnson – aye; Charlotte Hubbell – aye; Marty Stimson – aye; Sue Morrow – aye; Susan Heathcote – aye; David Petty – aye; Henry Marquard – aye. Motion carried unanimously.*

[Commissioners went into Closed Session]

*Motion was made by Charlotte Hubbell to grant a re-hearing. Motion fails due to the lack of a second.*

<b>RE-HEARING DENIED</b>
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## **CONTRACT SFY 2009 DNR/UHL AIR QUALITY BUREAU SUPPORT**

Sean Fitzsimmons of the Environmental Services Division presented the following information.

### **Recommendation:**

Commission approval is requested for a one year, \$2,034,730 contract between the department and the University of Iowa Hygienic Lab (UHL). This agreement funds UHL support of Air Quality Bureau activities. The contract will begin on July 1, 2008 and terminate on June 30, 2009.

**Funding Source:**

Funding for this contract is provided through fees from the air contaminant fund (\$1,273,957), federal 103 grant (\$189,160), and federal 105 grant (\$246,613), and state appropriations (\$325,000). The agreement amount for last year was \$1,899,870. Increases in line items in this year's contract are associated with increased costs for operation and maintenance and staff.

**Background:**

UHL operates most of the ambient air monitoring sites in Iowa. It also provides analytical and technical support for ambient air monitoring activities throughout the State. It weighs and determines the ionic composition of particulate samples and performs analysis of air samples for many toxic compounds found in urban air. UHL also provides analysis of asbestos samples gathered by DNR inspectors. The UHL quality assurance group conducts annual audits of UHL ambient air monitoring activities as well as those of the Local Programs.

**Purpose:**

The air monitoring that will be performed under the provisions of this contract will provide for ongoing air quality surveillance in the State of Iowa and will allow the department to judge the efficacy of its air pollution control efforts. It will continue efforts to characterize areas in eastern Iowa where elevated fine particulate are close to federal health standards.

**Consulting Firm Selection Process:**

Under Iowa Code 455B.103, the department is required to contract with the UHL for these services, unless the required services cannot be provided by the UHL.

*Motion was made by Susan Heathcote to approve the contract as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.*

**APPROVED AS PRESENTED**

**FINAL RULE - AMENDMENTS TO CHAPTER 135, TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS**

Elaine Douskey presented the following information.

The Department presents these rules for adoption and filing by the Commission. The Notice of Intended Action was published as ARC 6596B in the February 13, 2008 issue of the Iowa

Administrative Bulletin. These rules incorporate into the underground storage tank (UST) "risk-based corrective action" (RBCA) rules a new groundwater transport model for which there is broad support. The current RBCA process relies almost exclusively on groundwater transport models to predict risk to "receptors" such as public and private wells, enclosed spaces, surface water bodies, and plastic water lines. Any receptor which falls outside the actual and modeled plume is considered not at risk. These amendments establish a special "public water supply well assessment" policy and procedure for assessing risk to public water supply wells which fall outside the actual or modeled plume and does not rely solely on the groundwater transport model to predict risk. The new assessment policy takes into account numerous other variables such as well depth and construction, radius of influence of a pumping well, hydrogeologic separation, vertical movement of groundwater and other factors.

The rules also incorporate some policies and practices that are not particularly controversial. These include the practice of developing corrective action plans through a collaborative process involving the Department staff, owners and operators, groundwater professionals and funding sources. The rules clarify that when owners and operators agree to a plan which is formalized in a memorandum of agreement, failure to implement the agreement is considered a violation of a rule. The rules also require sampling of all drinking and non-drinking water wells within 100 feet of an actual plume regardless of whether the well falls outside a modeled plume.

Three public hearings were conducted after publication of the notice. The Department appeared before the Administrative Rules Review Committee (ARRC) on March 7, 2008 and again on May 13, 2008. In response primarily to some stakeholder concerns about the public water supply well assessment policy and procedure, the ARRC requested and the Department agreed after the March meeting to reconvene a stakeholder group to continue to work on resolving issues. The ARRC also requested and the DNR agreed to complete what was referred to as an "informal" regulatory analysis. The Department formed a "core stakeholder group" that consisted of representatives from the Iowa UST Fund, the Petroleum Marketers Management Insurance Company (PMMIC), Petroleum Marketers and Convenience Stores of Iowa (PMCI), Groundwater Professionals of Iowa, the Iowa Association of Water Agencies (IAWA), in addition to the Department. Other individual stakeholders actively participated as well.

Although it is not fair to say consensus was achieved, the Department felt there was a measure of acceptance of the Department's proposal to consider a more flexible risk assessment method and not rely solely on the groundwater transport model to assess risk to public water supply wells when they fall outside the modeled plume. Comments before the ARRC on May 13, 2008 indicate there is broad support for the rules from the public water supply well community but there may still be concerns and objections from the regulated community and funding sources.

The rules require that the owner/operator's groundwater professionals conduct at a minimum a desktop risk assessment of all public water supply wells within 2,500 feet of the UST source area. This is intended as a "screening" assessment. The rules attempt to allocate the burden of assessing the risk of impact to public water supply wells which fall outside the modeled plume by allowing the owner/operator's groundwater professional to conduct an analysis of risk based on available information and make a risk recommendation to the Department. If the Department disagrees with the groundwater professional's risk recommendation, the burden shifts to the

Department to make the case that there is sufficient hydrogeologic connection and risk to the public water supply wells to shift the burden of assessment back on the owner/operator. The rules also provide an opportunity for the owner/operator's groundwater professional to recommend screening out public water supply wells which fall within 2,500 feet of the UST source at Tier 1 (at Tier 1 the soil and groundwater plume has not been defined).

The Department believes it has conducted a thorough review of the policy options to address risk to public water supply wells and that stakeholders have been given a fair opportunity to provide comment and suggest policy options. Further review would not likely serve any productive purpose. The current rules represent a fair and balanced approach to risk assessment of public water supply wells.

The Department is recommending that the assessment rules be reviewed after two years if there is a request by the regulated community.

*Motion was made by Susan Heathcote to approve the final rule – amendments to Chapter 135 as presented. Seconded by Paul Johnson. Motion carried unanimously.*

**APPROVED AS PRESENTED**

#### **TERMINATION OF RULE MAKING—CHAPTER 64 – WASTEWATER CONSTRUCTION AND OPERATION PERMITS - STORM WATER FEE INCREASE**

Charles C. Corell, Chief of the Water Quality Bureau presented the following information.

This item was presented at the February 2008 EPC meeting and tabled until after the fate of the department's budget increase request to the governor for the Flood Plain Program was known. The legislature has passed the department's FY 2009 budget and it does not include the increase for the Flood Plain Program. The TMDL program will not spend storm water fee money in FY 2009.

The department recommends that the commission deny this request for termination and continue with the rule making process to increase the Storm Water fee. The commission will be asked to approve the final rule that raises the Storm Water Fee in a separate agenda item.

*Motion was made by Susan Heathcote to untable Chapter 64. Seconded by Charlotte Hubbell. Motion carried unanimously.*

*Motion was made by Charlotte Hubbell to deny the termination for rulemaking. Seconded by Sue Morrow. Motion carried unanimously.*

<b>APPROVED AS PRESENTED</b>
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**FINAL RULE - CHAPTER 64 --- WASTEWATER CONSTRUCTION AND OPERATION PERMITS**

Charles C. Corell, Bureau Chief for the Water Quality Bureau presented the following information.

The Commission is asked to approve the attached Adopted and Filed Notice to amend Chapter 64: Wastewater Construction and Operation Permits of the Iowa Administrative Code (IAC).

These proposed rules increase the fees for authorizations issued under the general permits for storm water discharges. The fee increases are necessary as the demands upon the storm water fees have exceeded the amount collected for the last several years. Also, the requirement that coverage provided by the multi-year (3, 4 and 5 year) fees expires no later than the general permit under which the coverage was issued is being removed to provide consistency with the amended requirements in the recently re-issued general permits.

The following changes are proposed:

- Increase permit fees according to the table below.
- Allow authorization coverage to extend past the expiration date of the general permits.

Permit authorization duration	Current fee	Proposed fee
1 year	\$150.00	\$175.00
3 years	\$300.00	\$350.00
4 years	\$450.00	\$525.00
5 years	\$600.00	\$700.00

<i>Motion carried unanimously.</i>
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<b>APPROVED AS PRESENTED</b>
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**PROPOSED RULE - CHAPTER 61, WATER QUALITY STANDARDS, SECTION 401  
CERTIFICATION OF SECTION 404 REGIONAL PERMIT 7 (RP 7)**

Charles Corell, Bureau Chief of the Water Quality Bureau presented the following information.

In July the department plans to bring a Notice of Intended Action to amend Chapter 61: Water Quality Standards to provide Section 401 water quality certification for Corps of Engineers (Corps) re-issued Regional Permit 7. Section 401 water quality certification is a state water quality agency's certification that a proposed activity will not violate state water quality standards.

Regional Permit 7 (RP 7) authorizes fill material placed in waters of the United States for bridge/road crossings. RP 7 was initially issued in 1979 and has been re-issued in 1985, 1989, 1995, 1999, and 2002. This permit is used for Iowa Department of Transportation (IDOT) and Iowa County and City Engineers' bridge/road crossing projects. Since this permit has been granted Section 401 Water Quality Certification in the past, the only change to Chapter 61 will be the effective date of the rule change.

The Corps issued the public notice for the re-issuance of RP 7 on February 4, 2008 and it expired on March 4, 2008. A copy of the February 4, 2008 Public Notice can be obtained from the Department of Natural Resources (DNR). The Corps received comments from several Native American Indian Tribes and from the State Historical Preservation Office (SHPO) regarding the "Archeological" paragraph. The Corps will be working with SHPO and the Tribes to draft acceptable language.

RP 7 was revised to be not only easier to understand but also contain more of the standard conditions that would be found in an individual permit for a bridge/road crossing project (e.g., the type of material that can be used as a temporary crossing, that wetland mitigation must be provided for any project impacting more than 0.10 acre of wetland, etc.) The revised RP 7 will allow the placement of 1,000 cubic yards of material to be "placed below the plane of ordinary high water or in wetland areas". The former RP 7 only allowed 500 cubic yards.

The IDOT had the opportunity to review and comment on the draft RP 7 prior to the Corps issuing the public notice with the final version of RP 7.

<b>INFORMATION</b>
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## **MONTHLY REPORTS**

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report

2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

### Attorney General Referrals Report

BBR, LLC Spirit Lake (3)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Pen alty	Referred Petition Filed Motion for Leave to Amend Order Granting Leave Amended and Substituted Petition Trial Date	9/19/06 4/18/07 6/12/07 6/18/07 6/18/07 9/16/08
Bulk Corporation 28 Sites (1) (6)	Petroleum Underground Tank	Operation and Maintenance Violations	Referred to Attorney General	Referred Petition Filed Trial Date	6/19/06 2/01/07 10/01/08
Cargill, Inc.; Mort's, Inc. Iowa Falls (2)	Solid Waste Wastewater	Illegal Disposal; Prohibited Discharge	Referred to Attorney General	Referred Petition Filed Consent (\$100,000/Civil; Injunction)	11/14/06 3/10/08 Decree 3/10/08
Clinton, City of (6)	Wastewater	Compliance Schedule; Discharge Limits	Referred to Attorney General	Referred	9/19/05
Cohrs, Bernard; Construction Dickinson Co. (3)	Cohrs Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed	11/14/06 9/20/07
Creston Bean Processing, LLC Creston (4)	Air Quality	Operational Violations; Monitoring/R eporting	Referred to Attorney General	Referred	9/04/07
Des Moines, City of; Metropolitan WW Reclamation Authority (5)	Wastewater	Compliance Schedule	Referred to Attorney General	Referred	8/15/06
De Vos, Harold and	Air Quality	Open	Order	Referred	9/19/06



## Environmental Protection Commission Minutes

June 2008

Sharon Rock Rapids (3)	Solid Waste Wastewater	Burning; Illegal Disposal; Operation Without Permit		Petition Filed Motion for Partial Summary Judgment Hearing on Motion Proposed Ruling by State Ruling Granting Partial Summary Judgment Trial Date on Civil Penalties	1/23/07 6/08/07 7/09/07 8/10/07 9/24/07 2/19/08
Environmental Recycling Co., Inc. Dwight Oglesbee Masena (4)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed	12/05/06 9/20/07
Equitable Equitable Condos Des Moines (5)	L.P/The Air Quality	Asbestos	Referred to Attorney General	Referred	3/11/08
Feinberg Metals Recycling Corp., Ft. Madison (6)	Solid Waste Wastewater	Operation Without Permit; Illegal Disposal; Stormwater – Operation Without Permit	Referred to Attorney General	Referred	3/06/07
Flying J, Inc.; CFJ Plaza Co. II, LLC; and CFJ Properties Clive (5)	Underground Tank Wastewater	Remedial Action; Prohibited Discharge; Pollution Prevention Plan Violations	Referred to Attorney General	Referred	11/07/07
Garrett Corporation; Delta Industries Waterloo (2)	Air Quality	Construction Without Permit; Construction Contrary to Permit	Referred to Attorney General	Referred Petition Filed Consent (\$45,000/Civil; Injunction)	1/02/07 3/28/08 Decree 3/31/08
Golden Oval Eggs LLC Thompson (2)	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred Petition Filed	12/05/06 3/29/07
Kruse Dairy Farm, Inc. Dyersville (1)	Animal Feeding Operation	Failure to Submit Plan	Order/Penal ty	Referred	12/19/05
Landfill of Des Moines #4 Des Moines (5)	Solid Waste	Operation Permit Violations – Other	Referred to Attorney General	Referred Petition Filed Trial Date	4/17/06 1/23/07 8/05/08

Leigh, Marsha Glenwood (4)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Penal ty	Referred Petition Filed Defendant's Motion to Dismiss State's Resistance/Motion to Dismiss Motion to Intervene Hearing on Motion to Dismiss Ruling Denying Motion to Dismiss Resistance to Motion to Intervene Hearing on Motion to Intervene Ruling Denying Motion to Intervene Hearing on Defense Motions Motion for Judgment on Default Order Granting Default Judgment (\$100,000/Civil; \$10,000/Admin. & Injunction)	9/20/04 3/29/05 4/20/05 5/02/05 5/12/05 5/23/05 5/23/05 5/23/05 6/27/05 6/29/05 12/05/05 9/12/05 12/7/05
Lincolnway Energy, Inc. Nevada (5)	Wastewater	Discharge Limits	Referred to Attorney General	Referred	12/04/07
Matrix Metals d/b/a Keokuk Steel Castings, Co. Keokuk (6)	Air Quality	Particulate	Referred to Attorney General	Referred	9/04/07
Miller Company Osceola (5)	Products Wastewater	Prohibited Discharge	Referred to Attorney General	Referred	12/05/06
Moellers, Kenneth Cresco (1)	Animal Feeding Operation	Prohibited Discharge – Open Feedlot; Failure to Report a Release; WQ Violations – General Criteria	Referred to AG	Referred Petition Filed Trial Date	2/20/06 12/11/06 5/21/08
Oakland Foods, LLC Oakland (4)	Wastewater Air Quality	Permit Violations; Construction Without Permit	Referred to Attorney General	Referred	3/11/08
Organic Technologies; Tim Danley; Ken Renfrow; Mike	Solid Waste	Permit Violations	Referred to Attorney General	Referred Petition Filed Application for Temporary	12/15/97 10/02/98 2/04/99

Danley  
Warren Co. (5)

Injunction 4/19/99  
Temporary Injunction 9/13/00  
Trial Date 9/28/00  
Partial Judgment (Clean-up Order) 12/12/02  
Contempt Application 2/20/03  
Contempt Hearing Date 2/20/03  
Contempt Finding and Civil Penalty 7/09/03  
(\$100,000 and 30 Days in Jail –  
Suspended until 7/8/03) 8/01/03  
Hearing Regarding 8/20/03  
Contempt 9/18/03  
Order Regarding 4/16/04  
Bond/Cleanup Deadline 12/10/04  
Bond Posted 1/05/05  
State Objections to Bond  
Ruling Denying Objections to Bond 8/15/06  
Status Hearing Date  
Hearing on Motion to Extend Cleanup  
Deadline  
Order Reinstating \$100,000 Civil  
Penalty  
Site Clean-up Completed

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Pellett Chemical Co., Inc.	Underground Tank	Failure to Submit Tier 2 Site Assessment	Referred to Attorney General	Referred Petition Filed	6/19/06 3/29/07
Wiota (4)				Defendant's Motion to Dismiss	4/24/07 4/27/07
				Resistance to Motion to Dismiss	5/14/07 5/14/07
				Hearing on Motion to Dismiss	6/08/07
				Ruling for State Denying Motion to Dismiss	8/20/07 9/17/07
				State's Motion for Summary Judgment	
				Motion for Partial Summary Judgment	
				Ruling Granting Partial Summary Judgment	

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River Bluff Resort, LLC; C.J. Moyna & Sons, Inc.; P.A.	Wastewater	Stormwater – Pollution Prevention Plan Violations; Water Quality Violations – General Criteria	Referred to Attorney General	Referred Tax Sale by County Petition Filed	4/03/07 6/18/07 4/15/08
McGuire Construction McGregor (1)					

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Roquette America, Inc. Keokuk (6)	Air Quality	Construction Without Permit	Referred to Attorney General	Referred	9/19/06
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Schoenberr, R. B. d/b/a Long Branch Tavern Monmouth (1)	Drinking Water	Permit Renewal	Orders/Penalties	Referred Court Order	6/20/97 12/09/98
				Re-Referred	11/21/02
				Petition Filed	3/11/05
				Application for Contempt	3/11/05
				Contempt Hearing	4/01/05
				Order for Contempt (\$3,000 fine)	8/05/05
				Arrest Warrant Issued	4/01/05
				Contempt/Temporary Injunction	5/03/05
				Hearing	7/06/05
				Temporary Injunction	8/05/05
				Granted	8/05/05
				Contempt Hearing Date	
				Contempt Hearing	1/31/06
				Order Finding Defendant in Contempt	1/04/08
				\$3,000 Fine	
				Amended Petition	
				Order Granting Judgment on Default	
				(\$10,000/civil; injunction)	
Sharkey, Dennis Dubuque Co. (1)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed	4/03/07 9/20/07
Simpson, Barry Worth Co.	Animal Feeding Operation	DNR Defendant	Defense	Petition Filed Answer Filed	10/18/04 11/04/04
Siouxland Energy & Livestock Coop Sioux Center (3)	Air Quality	Construction Without Permit	Referred to Attorney General	Referred	9/04/07
Sioux Pharm, Inc. Sioux County (3)	Wastewater	Operational Violations	Referred to Attorney General	Referred	3/11/08
SNF, Inc. dba Brand FX Body Company Pocahontas (3)	Air Quality	Operational Violations	Referred to Attorney General	Referred Petition Filed Consent (\$25,000/Civil; Injunction)	9/19/06 2/29/08 Decree 3/04/08
Stone v. Rembrand Enterprises, Inc.	Animal Feeding Operation	DNR Defendant	Defense	Petition Filed State Motion to Dismiss Hearing Ruling Dismissing Damage Claims State's Motion for Summary Judgment Order Granting Continuance Hearing on Summary Judgment State's Supp. Reply to Plaintiff's	12/06/04 1/10/05 3/07/05 5/17/05 2/27/06 3/20/06 5/01/06 6/19/06 10/04/06

				Resistance to Motion for Summary Judgment	11/03/06 11/03/06
				Ruling Denying Motion for Summary Judgment	1/08/07 1/22/07
				Application for Interlocutory Appeal	3/05/07 3/14/07
				Memorandum in Support of Interlocutory Appeal	4/06/07 4/13/07
				Application Denied	4/16/07 9/17/07
				Motion for Separate Trial	10/18/07
				Hearing on Motion for Separate Trial	1/29/08
				Order Granting Separate Trial	
				Trial Brief	
				Reply Brief	
				Trial Date	
				Ruling for State	
				Application for Interlocutory Appeal	
				Supreme Court Order Denying Interlocutory Appeal	
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Sweitzer, Chad and Lona; Winter Mobile Home Park New Hampton (1)	Drinking Water	Operation Without Permit; Monitoring/Reporting – Bacteria; MCL – Bacteria	Referred to Attorney General	Referred Petition Filed Demand for Default Order Granting Judgment on Default (\$5,000/civil; injunction)	11/14/06 5/03/07 8/16/07 10/09/07
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Welch Oil, Inc.; Boondocks USA, Inc. Lucas Co. (2)	Wastewater; Drinking Water	Monitoring/Reporting	Referred to Attorney General	Referred	12/04/07
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Yentes, Clifford Council Bluffs (4)	Solid Waste	Illegal Disposal	Referred to Attorney General	Referred Petition Filed Contempt Application Filed Contempt Hearing Ruling on Contempt Application (90 days jail suspended/\$500 fine) Compliance Hearing	4/03/07 9/21/07 9/21/07 11/05/07 11/29/07 2/18/08 2/18/08

Iowa Department of Natural Resources  
Environmental Services Division  
Report of Manure Releases

During the period April 1, 2008, through April 30, 2008, 9 reports of manure releases were forwarded to the central office. A general summary and count by field office is presented below.

Month	Total Incidents	Feedlot Application	Confinement Land	Transport	Hog	Cattle	Fowl	Other	Surface Water
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										Impacts
October	10 (12)	1 (0)	5 (9)	1 (0)	2 (3)	8 (9)	1 (0)	0 (3)	0 (0)	2 (1)
November	10 (10)	0 (0)	5 (2)	0 (3)	5 (5)	9 (8)	0 (1)	1 (1)	0 (0)	2 (1)
December	4 (5)	0 (0)	3 (5)	0 (0)	1 (0)	3 (4)	1 (1)	0 (0)	0 (0)	0 (1)
January	1 (4)	0 (0)	1 (3)	0 (1)	0 (0)	0 (4)	0 (0)	1 (0)	0 (0)	0 (0)
February	3 (4)	0 (0)	2 (2)	0 (0)	1 (2)	2 (3)	1 (1)	0 (0)	0 (0)	0 (1)
March	4 (7)	0 (0)	4 (6)	0 (0)	0 (0)	4 (6)	0 (0)	0 (0)	0 (0)	3 (2)
April	9 (4)	1 (2)	6 (2)	2 (0)	0 (0)	7 (2)	2 (2)	0 (0)	0 (0)	4 (2)
May	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
June	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
July	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
August	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
September	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
<b>Total</b>	<b>41 (46)</b>	<b>2 (2)</b>	<b>26 (29)</b>	<b>3 (4)</b>	<b>9 (10)</b>	<b>33 (36)</b>	<b>5 (5)</b>	<b>2 (4)</b>	<b>0 (0)</b>	<b>11 (8)</b>

(numbers in parentheses for the same period last year)

Total Number of Incidents Per Field Office This Period:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
0	2	3	0	3	1

Iowa Department of Natural Resources  
Environmental Services Division  
Report of Hazardous Conditions

During the period April 1, 2008, through April 30, 2008, 85 reports of hazardous conditions were forwarded to the central office. A general summary and count by field office is presented below. This does not include releases from underground storage tanks, which are reported separately.

<b>Substance</b>	<b>Mode</b>									
Month	Total Incidents	Agri-chemical	Petroleum Products	Other Chemicals	Transport	Fixed Facility	Pipeline	Railroad	Fire	Other*
October	63 (52)	5 (5)	38 (34)	20 (12)	19 (14)	27 (29)	3 (0)	1 (3)	3 (2)	10 (4)
November	70 (60)	18 (13)	26 (30)	26 (17)	15 (19)	43 (27)	1 (2)	2 (4)	1 (1)	8 (7)
December	60 (28)	2 (3)	36 (20)	22 (5)	18 (5)	33 (18)	1 (0)	2 (2)	1 (0)	5 (3)
January	45 (37)	3 (4)	34 (21)	8 (12)	16 (11)	24 (19)	3 (3)	1 (1)	0 (0)	1 (3)
February	60 (49)	3 (6)	44 (37)	13 (6)	17 (6)	31 (35)	3 (1)	2 (3)	1 (0)	6 (4)

March	73 (70)	7 (5)	48 (52)	18 (13)	21 (19)	38 (44)	4 (0)	4 (0)	0 (0)	6 (7)
April	85 (76)	24 (23)	45 (32)	16 (21)	25 (24)	49 (41)	1 (1)	4 (0)	2 (2)	4 (8)
May	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
June	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
July	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
August	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
September	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
<b>Total</b>	<b>456 (372)</b>	<b>62 (59)</b>	<b>271 (226)</b>	<b>123 (86)</b>	<b>131 (98)</b>	<b>245 (213)</b>	<b>16 (7)</b>	<b>16 (13)</b>	<b>8 (5)</b>	<b>40 (36)</b>

(numbers in parentheses for same period last year)

Total Number of Incidents Per Field Office This Period:  
vandalism and unknown

\*Other includes dumping, theft,

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
4	10	20	17	13	21

Iowa Department of Natural Resources  
Environmental Services  
Report of WW By-passes

During the period April 1, 2008 through April 30, 2008, 7 reports of wastewater by-passes were received. A general summary and count by field office is presented below. This does not include by-passes resulting from precipitation events.

Month	Total	Avg. Length (days)	Avg. Volume (MGD)	Sampling Required	Fish Kill
October '07	10(3)	0.147	0.004	2	0(0)
November '07	8(3)	3.697	0.027	3	0(0)
December '07	9(11)	0.365	0.048	2	0(0)
January '08	6(7)	0.725	0.001	0	0(0)
February '08	11(34)	0.280	0.255	2	0(0)
March '08	13(14)	0.464	0.047	4	0(0)
April '08	7(22)	0.736	0.221	3	0(0)
May '07	8(11)	0.565	7.386	1	0(0)
June '07	11(9)	0.059	0.001	2	0(0)
July '07	14(9)	0.389	0.045	7	0(0)
August '07	8(15)	0.108	0.317	3	0(0)
September '07	18(9)	0.203	0.039	0	0(0)

(numbers in parentheses for same period last year)

Total Number of Incidents Per Field Office This Period:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
0	0	1	2	1	3

4/26/99	Gerald and Judith Vens	6	Order/Penalty	FP	Clark	4/09/07 – Internal meeting with DNR management set for 4/12/07. 5/09/07 – Clark calls Vens’ attorney and extends settlement offer. Attorney agrees to inform client and get back to Dept. with response. 5/16/07 – Response from Vens’ attorney indicating qualified agreement with settlement offer pending an inspection by DNR staff.
7/13/00	Dan Witt	6	Order/Penalty	AFO	Book	<b>1/10/07 – FO6 staff visited the site to determine the current status and observed that the AFO portion of the farm operations has been closed. Hearing rescheduled for 11/25/07 12/07-Proposed Decision. Penalty was reduced to \$1500. 3/17/08 - Mr. Witt appeals proposed decision. Appeal hearing at the June EPC.</b>
10/02/01	Daryl Larson	6	Order	AFO	Clark	Hearing set for 12/04/07. 11/27/07 – DNR files motion for default entry. 12/21/07 – Default entry/Proposed Decision. No appeal
11/27/01	Dallas County Care Facility	5	Order/Penalty	WW	Hansen	10/03 – Letter to County attorney regarding appeal resolution. 1/04 – Letter to attorney regarding appeal. 4/04 – Dept. letter to attorney regarding appeal. 9/04 – Dept. letter to attorney regarding appeal. 6/26/07 – Appeal resolved. Facility connected to City WWTF. Consent order to be issued.
1/23/02	Clearview Mobile Home Park	6	Permit Conditions	WW	Hansen	10/31/02 – Construction permit issued for improvement to lagoon system. 10/31/03 – Update on construction project requested



						from Dept. engineer. 1/30/04 – Status report requested from Dept. staff. 3/15/04 – Letter from facility attorney regarding proposed upgrade with sand filters. 4/26/04 – Dept. letter to MHP attorney requesting construction schedule for project. 5/17/04 – Letter from MHP attorney with new schedule. 11/06 – Letter from MHP attorney regarding projects on hold due to revisions in WQ standards rules. 8/07 – Petition and Answer filed with DIA. Hearing continued to January 7, 2008 at request of MHP attorney. . Hearing continued. Project initiation meeting held on 1/9/08 to discuss project. Hearing set for 7/24/08.
2/10/03	Doug Osweiler	6	<b>Order/Penalty</b>	AFO	Clark	Hearing rescheduled for 11/8/07. Settlement likely, hearing continued pending finalized settlement.
4/25/03	Ag Processing Inc.	2	<b>Permit Conditions</b>	AQ	Preziosi	Continuing to negotiate.
12/02/03	Jeff Holland	2	<b>Order/Penalty</b>	AFO	Clark	6/6/07 - Dept. letter to Mr. Holland indicating case will be sent to DIA if settlement not reached by 6/22/07. 6/14/07 – Phone call from Mr. Holland. Tentative settlement pending receipt of swine depopulation history.
12/15/03	AGP (Emmetsburg)	3	<b>Permit Conditions</b>	AQ	Preziosi	Continuing to negotiate.
1/30/04	John Schmall d/b/a Carpenter Bar & Grill	2	<b>Order/Penalty</b>	WS	Hansen	<b>2/26/04 – Letter to WS attorney regarding resolving appeal. 9/04 – Per WS section, facility has returned to compliance. 11/06 – Facility building burned down, facility closed. 5/07- Dept. letter to attorney about resolving appeal. 5/25/07 – Settled. Consent order sent to attorney to be signed. 7/07- At request of attorney, CO sent to John Schmall for signature. 10/30/07 – Revised consent order sent to Mr. Schmall. 4/2/08 – Revised consent order sent for signature. 5/6/08- Consent order signed and issued. 5/9/08- WS operation permit issued.</b>
2/09/04	Swine USA, LP	5	<b>Order/Penalty</b>	AFO	Clark	2/2/07 – Draft Consent Order sent to attorney for new owner. 6/19/07 – Clark sends email concerning issues at other former Swine USA operations acquired by Whitestone. 6/27/07 – Whitestone attorney responds with general agreement to settlement but needs to confirm

						with client.
4/08/04	Silver Creek Feeders	4	<b>Permit Conditions</b>	AFO	Clark	Negotiating before filing.
4/16/04	Ag Processing Inc. (Sheldon)	3	<b>Permit Conditions</b>	AQ	Preziosi	Continuing to negotiate.
5/12/04	Ag Processing, Inc.	3	<b>Permit Conditions</b>	AQ	Preziosi	Continuing to negotiate.
5/25/05	Iowa Quality Beef Cooperative	5	Order/Penalty	WW	Hansen	6/26/06 – FO meeting with company officials to discuss reopening of plant. 7/12/06 – FO inspection of plant. Hearing set for 10/29/07. 8/07 – Petition and Answer filed. Company requested continuance. Reset for 1/22/07. 12/18/07 – Meeting scheduled. Meeting rescheduled for 2/13/08. Hearing reset for 3/28/08. Settled. Hearing continued to 5/8/08 pending settlement. Consent order sent to company attorney for signature. 5/7/08- Consent order signed and issued. 5/9/08- Dismissal order issued by ALJ. Case closed.
2/27/06	Greig & Co., Inc.	3	<b>NPDES Permit</b>	WW	Clark	Negotiating before filing.
4/10/06	Praxair, Inc.		<b>Permit Conditions</b>	AQ	Preziosi	Negotiating.
7/07/06	Washington County (Permittee: Riverside Casino)	6	Water Use Permit	WR	Clark	Negotiating before filing.
8/09/06	Cargill (Eddyville)	5	<b>Permit Conditions</b>	AQ	Preziosi	Negotiating.
12/27/06	Piper Motor Co. Inc.	6	<b>Order/Penalty</b>	AQ/WW	Tack	Default entered 3/18/08. Case closed.
1/08/07	Cargill (Eddyville) 02-A-393-S3, 02-A-394-S2, 02-A-395-S2, 02-396-S3, 05-A-930, 05-A-931	5	<b>Permit Conditions</b>	AQ	Preziosi	Negotiating before filing.
1/09/07	Charlie Van Meter; Van Meter Feedyard	5	<b>Permit Conditions</b>	WW	Clark	Negotiating before filing.
1/11/07	Clow Valve Company (20 Permits)	5	<b>Permit Conditions</b>	AQ	Preziosi	Negotiating before filing.
6/13/07	Crossroads Cattle Co.; John Reisz	4	<b>Permit Conditions</b>	WW	Clark	Negotiating before filing.
6/19/07	Goldsmith and Son, Inc.; John E. Goldsmith; Patti R. Goldsmith; and J & G Pallet, LLC	3	<b>Order/Penalty</b>	WW	Hansen	7/07- Facility returned to compliance. To be set for hearing. Hearing set for 5/2/08. Petition and answer filed with DIA. Hearing continued pending settlement discussions. Settled. 5/14/08- Consent order sent to company attorney for review.
6/25/07	Rick Onken		<b>Permit Conditions</b>	WW	Clark	Negotiating before filing.
8/10/07	Tate & Lyle Ingredients Americas	2	<b>Permit Conditions</b>	AQ	Preziosi	Negotiating before filing.
8/10/07	Port Louisa Land Co.; E. A. Hicklin	6	<b>Variance Denial</b>	FP	Clark	Negotiating before filing.
9/25/07	Winneshiek County Conservation Board (Kendallville Park)	1	<b>Permit Revision</b>	WS	Hansen	Negotiating before filing.
11/05/07	Twin Knolls 6 <sup>th</sup> Addition	1	<b>Permit Conditions</b>	WS	Hansen	Negotiating before filing.
11/15/07	Alcoa	6	<b>Permit Conditions;</b>	AQ	Preziosi	Negotiating.

7			<b>Permit # 97-A-140-S2</b>			
11/15/07	Alcoa	6	<b>Permit Conditions; Permits #85-A-067P-S2; #87-A-045P-S2; #89-A-177P-S2</b>	AQ	Preziosi	Negotiating.
11/15/07	Gary West		<b>Permit Denial</b>	AFO	Clark	Negotiating before filing.
11/16/07	Justin Cooper		<b>Permit Denial</b>	AFO	Clark	Negotiating before filing.
11/26/07	Larry J. Fishback	6	<b>Order/Penalty</b>	WW	Schoen ebaum	Set for hearing 5/21/08.
1/14/08	Alliant Energy	1	<b>Permit Conditions</b>	AQ	Preziosi	Negotiating.
1/22/08	Des Moines County Regional Solid Waste Commission	6	<b>Permit Condition; #29-SDP-01-76P</b>	SW	Tack	Negotiating before filing.
2/07/08	Glenn Goodsell	5	<b>Licensee Discipline</b>	WS	Wornson	<b>Hearing set for 6/17/08.</b>
2/22/08	Cliff's Place	1	<b>Order/Penalty</b>	WS	Hansen	Negotiating before filing.
2/26/08	Bell Air Betterment Corporation	3	<b>Permit Condition</b>	WS	Hansen	Negotiating before filing.
2/28/08	Snap-On Tools Mfg. Co.	2	<b>Termination from Land Recycling Program</b>	HC	Mullen	Negotiating before filing.
3/10/08	Anthony Herman; Mighty Good Used Cars	5	<b>Order/Penalty</b>	WW	Tack	Negotiating before filing.
4/22/08	Environmental Reclamation and Recycling, LLC	5	<b>Permit Rescission</b>	SW	Tack	Sent to DIA to be set for hearing..
4/25/08	ADM (07-A-1078P, 07-A-1079P and 07-A-1080P)	5	<b>Permit Conditions</b>	AQ	Preziosi	New case.
4/28/08	South Central Iowa Landfill Agency	5	<b>Permit Conditions</b>	SW	Tack	New case.

**DATE:** June, 2008

**TO:** EPC

**FROM:** Ed Tormey

**RE:** Enforcement Report Update

The following new enforcement actions were taken during this reporting period:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Mike Welter dba M & M Enterprises, Sigourney (6)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Consent Order \$2,000	4/25/08
DeLong Construction, Inc., Washington (6)	Air Quality	Asbestos	Consent Order \$3,000	4/25/08
VeraSun Charles City, LLC Charles City (2)	Air Quality	Construction Contrary to Permit	Consent Order \$9,000	4/25/08

Steve Elsbernd, Ridgeway (1)	Animal Feeding Operation	Prohibited Confinement	Discharge	–	Consent Order \$3,500	4/25/08
Sutherland, City of (3)	Wastewater	Compliance Operational Violations	Schedule;		Consent Amendment	4/25/08
Ocheyedan, City of (3)	Wastewater	Compliance Schedule; Limits; Operation Violations	Discharge		Consent Order Stip. Penalties	4/25/08
Stonegate Land Company LLC Clive (5)	Wastewater	Stormwater Prevention Plan	–	Pollution	Consent Order \$8,000	4/25/08
Magnum Alliance, LLC Hardin Co. (3)	Animal Feeding Operation	Failure to Submit Plan			Order/Penalty \$3,500	5/06/08
John Schmall dba Carpenter Bar and Grill Carpenter (2)	Drinking Water	Operation Without Permit; Monitoring/Reporting – Bacteria, Nitrate; Permit Renewal			Consent Amendment \$1,000	5/06/08
Edward Dale Klyn, Wayne County (5)	Animal Feeding Operation	Prohibited Feedlot	Discharge	– Open	Order/Penalty \$5,000	5/07/08
Mark Petersen Calhoun Co. (3)	Animal Feeding Operation	Prohibited Confinement	Discharge	–	Consent Order \$4,000	5/07/08
Iowa Quality Beef Supply Cooperative Tama (5)	Wastewater	Monitoring/Reporting; Operation Violations			Consent Amendment	5/07/08
Ray Griffin; SEMCO Keokuk Co. (6)	Solid Waste Wastewater Air Quality	Leachate Control; Prohibited Discharge; Open Burning			Order/Penalty \$10,000	5/07/08
Reicks View Farms Quality Meats, LLC Chickasaw Co. (1)	Wastewater	Operation Without Permit; Prohibited Discharge			Emergency Order	5/16/08
Clinton County Bio Energy, Clinton Co. (6)	Wastewater	Prohibited Stormwater Prevention Plan Violations	Discharge; –	Pollution	Consent Order \$7,000	5/16/08
Lee Construction, Inc. Mills Co. (4)	Wastewater	Stormwater Prevention Plan Violations	-	Pollution	Consent Order \$2,000	5/16/08
N-T Lands, LLC; Ohana Lakes; Craig Nakomoto Mills Co. (4)	Wastewater	Stormwater Prevention Plan Violations	–	Pollution	Consent Order \$9,750	5/16/08
Fairfield, City of (6)	Wastewater	Operational Prohibited Discharge	Violations;		Consent Order Stip. Penalties	5/16/08
Karl Molyneux What Cheer (6)	Air Quality Solid Waste	Open Burning; Illegal Disposal			Consent Order \$2,500	5/19/08
Joe'd, Karen & Jesse Axmear	Animal Feeding	Failure to Submit Plan			Consent Order	5/19/08

Keokuk Co. (6)

Operation

\$4,000

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
RULEMAKING STATUS REPORT  
June, 2008**

1. Ch. 1 - Environmental Protection Commission - Quorum and Voting Requirements	6/10/08	*7/02/08		*7/08/08	*7/22/08	*7/22/08	*8/12/08	*8/12/08	*9/10/08		*10/06/08	*10/15/08
2. Ch. 20-23, 25, 33 - AQ Program Rules - Updates, Revisions and Additions	12/04/07	1/02/08	6517B	1/07/08	2/04/08	2/05/08	4/08/08	4/08/08	5/07/08	6783B	*6/11/08	*6/11/08
3. Ch. 20-23, 25, 33 - AQ Program Rules - Updates, Revisions and Additions	5/13/08	*6/04/08		*6/10/08	7/07/08	7/08/08	*8/12/08	*8/12/08	*9/10/08		*10/06/08	*10/15/08
4. Ch. 61 - WQ River and Stream Segments	10/01/07	10/24/07	6351B	11/13/07	11/15, 20, 27, 30/07	12/11/07	4/08/08	4/08/08	5/07/08	6782B	*6/11/08	*6/11/08
5. Ch. 64 - Wastewater Construction and Operation Permits	12/04/07	1/02/08	6521B	1/07/08	1/24/08	1/24/08	6/10/08	*6/10/08	*7/02/08		*7/08/08	*8/06/08
6. Ch. 113 - Sanitary Landfills for Municipal Solid Waste; Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes	5/13/07	*6/04/08		*6/10/07	*7/10/08	*7/08/08	*8/12/08	*8/12/08	*9/10/08		*10/06/08	*10/15/08
7. Ch. 135 - Technical Standards and Corrective Action Requirements for Owners and Operators of USTs	1/15/08	2/13/08	6596B	3/04/08	3/04-06/08	3/06/08	6/10/08	*6/10/08	*7/02/08		*7/08/08	*8/06/08

**IOWA DEPARTMENT OF NATURAL RESOURCES  
COMPLIANCE AND ENFORCEMENT BUREAU**

**DATE:** June 1, 2008

**TO:** Environmental Protection Commission

**FROM:** Ed Tormey

**SUBJECT:** Summary of Administrative Penalties

**The following administrative penalties are due:**

NAME/LOCATION	PROGRAM	AMOUNT	DUE DATE
Robert and Sally Shelley (Guthrie Center)	SW	1,000	3-04-91
Verna and Don Reed; Andrea Silsby (Union Co.)	SW	1,000	4-07-94
Elery Fry; Allen Fry; Becky Sandeen (Monroe Co.)	SW	6,000	1-20-96
Daryl & Karen Hollingsworth d/b/a Medora Store(Indianola)	UT	7,792	3-15-96
Robert Jeff White (Dallas Co.)	AQ/SW	10,000	7-14-97
Greg Morton; Brenda Hornyak (Decatur Co.)	SW/AQ/WW	3,000	11-04-98
Ray Stamper; Bryan Zenor (Polk Co.)	SW	2,000	12-12-98
Otter Creek Station (Dubuque Co.)	WS	325	3-04-99
Lindahl & Sons Salvage (Boone)	AQ/SW	10,000	11-29-00
R & R Ranch (Osceola)	WW	10,000	8-30-00
Teckenburg, Inc.; Jerry Teckenburg (Cedar Rapids)	UT	6,380	7-06-01
James Harter (Fairfield)	WW	1,483	8-01-01
Wisconsin North dba National Petroleum, Inc. (Clinton)	UT	5,000	8-04-01
# Troy DeGroote; Casey DeGroote (Butler Co.)	AFO/AQ/SW	108	3-08-02
Charlotte Caves (Oskaloosa)	HC	9,487	4-03-02
# Practical Pig Corporation (Clinton Co.)	AFO	2,000	5-26-02
Mobile World, L.C. (Camanche)	WW	2,000	5-27-02
M-F Real Estate; Fred "Butch" Levell (Carter Lake)	HC	1,701	8-18-02
Midway Oil Co.; David Requet (Davenport)	UT	5,355	9-20-02
Dale Schaffer (Union Co.)	AQ/SW	10,000	11-05-02
	UT	32,690	2-28-03
U.S. PETRO, INC.; SSJG PETROLEUM; SUKHDEV SINGH			
	UT	44,900	2-28-03
MIDWAY OIL CO.; DAVID REQUET; JOHN BLISS			
Green Valley Mobile Home Park (Mt. Pleasant)	WW	5,000	4-23-03
Midway Oil Company (West Branch)	UT	7,300	5-03-03
Midway Oil Company (Davenport)	UT	5,790	5-03-03
Efren Valdez (Warren Co.)	SW	2,782	6-09-03
Albert Miller (Kalona)	AQ/SW	10,000	9-26-03
Robert L. Nelson (Orient)	UT	617	12-26-03
Mark Anderson (Des Moines Co.)	AQ/SW	6,188	3-22-04
Mike Phillips aka Jeff Phillips (Cambridge)	AQ	5,000	3-27-04
Mike Messerschmidt (Martinsburg)	AQ/SW	500	4-13-04
Interchange Service Co., Inc., et.al. (Onawa)	WW	6,000	5-07-04
Emer Carlson (Fairfield)	AQ	5,900	6-01-04
Iowa Falls Evangelical Free Church (Iowa Falls)	WS	750	6-13-04
Mitchell Town Pump (Mitchell)	WS	2,080	6-16-04
# Dunphy Poultry (Union Co.)	AFO	1,500	6-27-04
Shane Preder (Ft. Madison)	AQ	477	7-12-04
James L. Heal d/b/a A-1 Domestics	SW/WW	1,800	7-16-04

<b>(Homestead)</b>			
<b>Ranch Supper Club (Swisher)</b>	WS	300	8-02-04
# Cash Brewer (Cherokee Co.)	AFO/SW	10,000	8-25-04
<b>Spillway Supper Club (Harpers Ferry)</b>	WS	1,500	9-06-04
<b>David Niklasen (Shelby Co.)</b>	SW	100	9-11-04
# <b>Doorenbos Poultry; Scott Doorenbos</b>	AFO	1,500	10-09-04
<b>(Sioux Co.)</b>			
<b>T &amp; T Corner Bar (McIntire)</b>	WS	3,000	10-26-04
Rock N Row Adventures (Eldora)	WS	3,000	10-23-04
# <b>Norm Cleveringa (Lyon Co.)</b>	AFO	750	11-27-04
<b>Americana Bowl (Ft. Madison)</b>	WS	100	11-28-04
<b>Howard Traver, Jr. (Cass Co.)</b>	SW	3,000	12-14-04
Monty Branstad (Winnebago Co.)	AQ/SW	8,000	2-03-05
<b>Valley Country Café; NOO Investment Co.</b>	WS	5,000	2-18-05
<b>(Cass Co.)</b>			
Denzel Edwards (Cass Co.)	AQ/SW/HC	500	3-01-05
Harold Linnaberry (Clinton Co.)	SW	1,000	5-18-05
Elery Fry; Allen Fry; Mel Fry; Ron Fry	SW	10,000	6-20-05
<b>(Moravia)</b>			
Fedler and Company; Tony Fedler (Mt. Pleasant)	HC	3,670	6-25-05
# Matt Hoffman (Plymouth Co.)	AFO	750	8-08-05
Vernon Kinsinger (Washington Co)	SW	3,930	12-31-05
# <b>Joel McNeil (Kossuth Co.)</b>	AFO	2,500	1 21-06
<b>Carl Cliburn (Wapello Co.)</b>	AQ/SW	3,474	2-03-06
<b>Affordable Asbestos Removal, Inc.</b>	AQ	7,000	4-28-06
<b>(Monticello)</b>			
<b>Jeff Albrecht (Humboldt Co.)</b>	AQ	500	5-06-06
<b>CRM Enterprises; Envirobest, Inc. (Iowa City)</b>	AQ	7,000	5-21-06
# <b>Mike Elsbernd (Winneshiek Co.)</b>	AFO	3,000	6-29-06
# <b>Troy VanBeek (Lyon Co.)</b>	AFO	3,500	10-16-06
# <b>Randy Rudolph (Audubon Co.)</b>	AFO	3,500	11-06-06
<b>Larry Bergen (Worth Co.)</b>	AQ/SW	1,207	11-01-06
Mobile World, LC; R. Victor Hanks	WW	22,500	4-01-07
<b>(Clinton Co.)</b>			
Edward Branstad; Monroe "Monty" Branstad	AQ	4,500	4-16-07
<b>(Forest City)</b>			
Colleen Weber (Mitchell Co.)	AQ/SW	1,500	6-01-07
James L. Heal; A-1 Imports (Homestead)	WW/SW	10,000	7-18-07
# Doug Orwig Site #1 (Dickinson Co.)	AFO	3,500	10-01-07
# Brian Riesberg (Carroll Co.)	AFO	9,500	11-12-07
# Grand Prix Industries, Inc. (Kossuth Co.)	AFO	300	12-01-07
# Jim Christensen (Clay Co.)	AFO	6,000	12-27-07
# Leland Van Kooten; Darin Van Kooten	AFO	5,500	12-30-07
<b>(Leighton)</b>			
Muscatine County SWM Agency (Muscatine)	SW	4,000	1-03-08
Mark Witt; Witt Auto Salvage (Monroe Co.)	SW/WW	8,000	1-15-08
# JPP Pork, Inc. (Ainsworth)	AFO	3,000	2-09-08
Golden Furrow Fertilizer, Inc. (Agency)	HC	4,000	2-09-08
# Iowa Select Farms, LLP (Clarke Co.)	AFO	2,500	2-20-08
# Joshua Van Der Weide (Lyon Co.)	AFO	3,500	2-25-08
Clinton Community School District	WW	3,000	2-25-08

Mike Barrett; Jody Barrett (Polk Co.)	SW	6,200	3-05-08
# Richard Steen; Jeff Behrens (Montgomery Co.)	AFO	8,000	4-19-08
Dexter Laundry, Inc. (Fairfield)	WW	2,500	5-07-08
Randolph, City of	AQ/SW	4,000	5-07-08
Mike Welter; M & M Enterprises (Sigourney)	AQ/SW	2,000	5-25-08
VeraSun Charles City, LLC (Charles City)	AQ	9,000	5-25-08
Stonegate Land Company, LLC (Clive)	WW	8,000	5-25-08
# Steve Elsbernd (Ridgeway)	AFO	3,500	5-25-08
# Ted Dickey dba Dickey Farms (Muscatine Co.)	AQ/SW/AFO	4,000	6-01-08
Brush & Weed Control; New Farmers Drainage (Monona Co.)	WW	10,000	6-13-08
Joe'd, Karen and Jesse Axmear (Keokuk Co.)	AFO	4,000	6-19-08
Karl Molyneux (What Cheer)	AQ/SW	2,500	7-19-08
# Magnum Alliance LLC (Hardin Co.)	AFO	3,500	-----
Carpenter Bar & Grill (Carpenter)	WS	1,000	-----
Ray Griffin; SEMCO (Keokuk Co.)	SW/WW/AQ	10,000	-----
# Edward Dale Klyn (Wayne Co.)	AFO	5,000	-----
<b>TOTAL</b>		<b>494,186</b>	

**The following penalties have been placed on payment plans:**

* Jerry Feilen and Rick Bain (Pottawattamie Co.)	AQ/SW	1,663	12-15-03
#*Floyd Kroeze (Butler Co.)	AFO	1,500	6-01-04
#*James Boller (Kalona)	AFO	3,034	8-19-04
* Reginald Parcel (Henry Co.)	AQ/SW	110	4-23-05
* Country Stores of Carroll, Ltd. (Carroll)	UT	1,408	6-06-05
#*Tony Mertens (Mt. Pleasant)	<b>AFO</b>	<b>2,644</b>	<b>7-20-06</b>
#*Dale Schumann (Buena Vista Co.)	AFO	1,000	8-01-06
#*Galen Drent (Boyden)	AFO	1,510	2-01-07
#*Richard Beelner; Beelner 1 and 2 (Plymouth Co.)	AFO	100	4-01-07
* Douglas Bloomquist (Webster Co.)	AQ/SW	3,500	12-01-07
#*Charles Wauters (Keystone)	AFO/SW	3,500	12-01-07
#*Eugene Reed (Washington Co.)	AFO	500	12-01-07
Jack Knudson (Irwin)	UT	10,000	1-15-08
* Fred Knosby (Cumming)	AQ/SW	1,664	3-15-08
* Randy Kennedy; R K Construction & Demolition (Slater)	AQ	1,600	4-15-08
* Craig Burns (Postville)	WW	1,950	4-15-08
* Fred Miller; Earthworks Contracting (Quimby)	AQ	6,720	4-15-08
#*John Kauffman (Iowa City)	AFO	1,456	4-20-08
#*Meyer Bros.; Steve Meyer (Ida Co.)	AFO	4,688	5-01-08
* John Danker (Lee Co.)	AQ/SW	1,388	5-22-08
#*Loren and Rhonda Van Zante (Eddyville)	AFO	3,000	5-30-08
#*Loren and Rhonda Van Zante (Eddyville)	AFO	3,600	5-30-08
#*James Hogan; Hogan Brothers (Jones Co.)	AFO	1,248	6-01-08
* Willey, City of	AQ/SW	2,000	6-01-08



## Environmental Protection Commission Minutes

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# Doug Hymbaugh (Ringgold Co.)	AQ/SW	1,000	6-08-08
#*Neal Rupiper (Carroll)	AFO	2,062	6-10-08
#*Schomers Cattle, LLC (Shelby Co.)	AFO	5,000	6-10-08
* Curt and Kelly Tracy; Condev, Inc. (Union Co.)	AFO	8,183	6-11-08
* Chelsea, City of	WW	200	6-15-08
#*Chris Hunt; Steven Hunt; Hunt Bros. Feedlot (O'Brien Co.)	AFO	2,495	9-01-08
#*Joe Tomka (Carroll Co.)	AFO	1,750	12-01-08
<b>TOTAL</b>		<b>80,473</b>	

**The following administrative penalties have been appealed:**

AMOUNT	NAME/LOCATION	PROGRAM	
	Gerald and Judith Vens (Scott Co.)	FP	5,000
	# Dan Witt (Clinton Co.)	AFO	3,000
	Dallas County Care Facility (Adel)	WW	5,000
	# Doug Osweiler (South English)	AFO	5,000
	# Jeff Holland (Winnebago Co.)	AFO	5,500
	# Swine USA; Davis Finishing Site (Clarke Co.)	AFO	750
	LeMars, City of	WW	9,000
	Bedrock Gravel, In. (Buena Vista Co.)	AQ/SW	10,000
	Goldsmith & Son, Inc.; J & G Pallet LLC (Sergeant Bluff)	WW	10,000
	Hidden Valley MHP; Larry Fishback (Washington)	WW	2,000
	Cliff's Place (Waverly)	WS	5,800
	Anthony Herman; Mighty Good Used Cars (Polk Co.)	WW	7,500
	<b>TOTAL</b>		<b>68,550</b>

**The following administrative penalties have been collected:**

NAME/LOCATION	PROGRAM	AMOUNT
# Doug Harris (Louisa Co.)	AFO	5,000
Binder Trucking, Inc. (Buena Vista Co.)	WW	8,000
Bedford, City of	AQ	2,000
# ATsMA Dairy Farms (Granville)	AFO	208
* Midway Water & Lighting Co., Inc. (Marion)	WS	100
PAID IN FULL		
# Pheasant Ridge Farms, Inc. (Pottawattamie Co.)	AFO	9,000
Clinton County Bio Energy, LLC (Clinton)	WW	7,000
#*Neal Rupiper (Carroll)	AFO	188
DeLong Construction, Inc. (Washington)	AQ	3,000
#*John Kauffman (Iowa City)	AFO	208
#*Loren and Rhonda Van Zante (Eddyville)	AFO	300
#*Loren and Rhonda Van Zante (Eddyville)	AFO	250
* Chelsea, City of	WW	200
Bruce Piper; Piper Motor Company, Inc.	AQ/WW	3,000

(Bloomfield)		
#*James Hogan; Hogan Brothers (Jones Co.)	AFO	104
# Mark Petersen (Calhoun Co.)	AFO	4,000
Lee Construction, Inc. (Mills Co.)	WW	2,000
Lake Ohana; Craig Nakamoto; N-T Lands (Mills Co.)	WW	9,750
Roger McEwan (Palo Alto Co.)	WW	10,000
* Curt and Kelly Tracy; Condev, Inc. (Union Co.)	AFO	190
Woodbury Co.; Prairie Hills PWS (Sioux City)	WS	6,450
#*Neal Rupiper (Carroll)	AFO	188
		<b>71,136</b>
	<b>TOTAL</b>	

The following penalty payments were collected by the Department of Revenue during the Month of April

Emer Carlson	AQ	200
Larry Bergen, Jr.	AQ	150
	<b>TOTAL</b>	<b>350</b>
<b>Total Penalties Collected</b>		<b>64,658</b>

<b>INFORMATION</b>
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## GENERAL DISCUSSION

Ed Tormey and Bara Lynch gave a presentation on the 2007 Compliance & Enforcement report.

Commissioners discussed logistics for the July meeting in Storm Lake.

## NEXT MEETING DATES

July 7-8, 2008 – Storm Lake

## ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Henry Marquard adjourned the meeting at 6:13 p.m., Tuesday, June 10, 2008.

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Richard A. Leopold, Director

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Henry Marquard, Chair

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Suzanne Morrow, Secretary

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